राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 04 नवम्बर, 2022 / 13 कार्तिक, 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 24th September, 2022

No. Shram (A) 3-8/2021 (Awards) L.C. Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette" :—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/ Order
1.	Ref. 183/2018	Sh. Parthsarthi	Maharaja Agarsain University, Baddi.	01-08-2022
2.	Ref. 158/2018	Sh. Sushil Kumar	Maharaja Agarsain University	01-08-2022
3.	Ref. 129/2019	Sh. Rajender Singh	M/s Narendra Hotel & Restaurant, Rampur.	01-08-2022
4.	Ref. 130/2019	Sh. Kushal Chand	M/s Narendra Hotel & Restaurant, Rampur.	01-08-2022
5.	Ref. 129/2017	Sh. Sandeep	Registrar, ICFAI University, Baddi	01-08-2022
6.	Ref. 160/2020	Sh. Lovely Kumar	Registrar, APG University, Shimla	01-08-2022
7.	Ref. 184/2021	Sh. Sunit Kumar	M/s Shobhagia Clothing, Baddi	01-08-2022
8.	Ref. 105/2020	Sh. Vivek	M/s New Grow Eden Farm & Anr	01-08-2022
9.	Ref. 307/2020	Sh. Gurusewak Singh	M/s Phoniex Udyog Ltd.	01-08-2022
10.	Ref. 157/2018	Sh. Mohan Lal	Vivek International Public School, Baddi.	01-08-2022
11.	Ref. 128/2017	Sh. Vikas Thakur	M/s Autocop India (P) Ltd. Baddi	01-08-2022
12.	Ref. 181/2020	Sh. Rama Kant	M/s Sai Tech Medicare (P) Ltd.	01-08-2022
13.	Ref. 47/2017	Sh. Yashwant Singh	Mondelez India Foods Ltd.	01-08-2022
14.	App. 85/2017	Sh. Narender Kumar	Mondelez India Foods Ltd.	01-08-2022
15.	App. 87/2017	Sh. Vijay Kumar	Mondelez India Foods Ltd.	01-08-2022
16.	App. 88/2017	Sh. Yogesh	Mondelez India Foods Ltd.	01-08-2022
17.	App. 89/2017	Sh. Mangal Singh	Mondelez India Foods Ltd.	01-08-2022
18.	Ref. 233/2022	Sh. Vijay Kumar	M/s SKS Metal (P) Ltd.	01-08-2022
19.	Ref. 234/2022	Sh. Desh Raj	M/s SKS Metal (P) Ltd.	01-08-2022
20.	Ref. 235/2022	Sh. Manoj Kumar	M/s SKS Metal (P) Ltd.	01-08-2022
21.	Ref. 182/2018	Sh. Dhreej	Maharaja Agarsain University, Baddi.	08-08-2022
22.	Ref. 291/2020	Smt. Meera Devi	A & A Modular System, Baddi.	08-08-2022
23.	Ref. 27/2017	Sh. Satish Kumar	M/s Ultratek Pharma	08-08-2022
24.	Ref. 28/2019	Sh. Gopal Singh	M/s Ultratek Pharma	08-08-2022
25.	Ref. 99/2021	Sh. Rajpal Verma	M/s Integrace Health (P) Ltd.	08-08-2022
26.	App. 07/2019	Sh. Harish Thakur	M.D. Bhagat Urban Copt. Bank Ltd.	08-08-2022
27.	App. 08/2019	Sh. Suresh Kumar	M.D. Bhagat Urban Copt. Bank Ltd.	08-08-2022
28.	App. 83/2017	Sh. Raj Kumar	M.D. Bhagat Urban Copt. Bank Ltd.	08-08-2022
29.	Ref. 310/2020	Sh. Mangal Sain	M/s Technology House India (P) Ltd.	08-08-2022

30.	Ref. 312/2020	Dharmender Singh	M/s Technology House India (P) Ltd.	08-08-2022
31.	Ref. 314/2020	Sh. Manmohan Singh	M/s Technology House India (P) Ltd.	08-08-2022
32.	Ref. 315/2020	Sh. Joginder Singh	M/s Technology House India (P) Ltd.	08-08-2022
33.	Ref. 316/2020	Sh. Ajeshi Negi	M/s Technology House India (P) Ltd.	08-08-2022
34.	Ref. 317/2020	Sh. Mohan Singh	M/s Technology House India (P) Ltd.	08-08-2022
35.	Ref. 318/2020	Sh. Mohan Singh	M/s Technology House India (P) Ltd.	08-08-2022
36.	Ref. 319/2020	Sh. Vinod Kumar	M/s Technology House India (P) Ltd.	08-08-2022
37.	Ref. 320/2020	Sh. Mohar Singh	M/s Technology House India (P) Ltd.	08-08-2022

By order,
AKSHAY SOOD,
Secretary (Lab. & Emp.).

BEFORE Sh. RAJESH TOMAR PRESIDING JUDGE H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**
CAMP AT NALAGARH

Reference Number : 183 of 2018

Instituted on : 01-11-2018

Decided on : 01-08-2022

Parthsarthi s/o Shri Amrik Singh r/o Village Kudanwala, P.O. Madhala, Tehsil Baddi, District Shimla, H.P. . .*Petitioner.*

Versus

The Managing Director, Maharaja Agarsain University, Atal Shiksha Kunj, Kalujhanda, P.O. Madhala, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Shri R. K. Negi, Advocate

For Respondent: Shri Rajiv Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 12-07-2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the services of Shri Parthsarthi s/o Shri Amrik Singh r/o Village Kudanwala, P.O. Madhala, Tehsil Baddi, District Shimla, H.P. by the Managing Director, Maharaja Agarsain University, AtalShikshaKunj, Kalujhanda, P.O. Madhala, Tehsil Baddi, District Solan, H.P. *w.e.f.* 20-07-2017 without complying with the provisions of the Industrial Disputes Act, 1947as alleged by the workman is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to firm the above employer**?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim praying therein for his reinstatement with all service benefits including back-wages.

3. Petitioner Shri Parthsarthi *vide* his separate statement has stated that the matter stood amicably resolved between the parties. The respondent University has paid a sum of ₹ 15,000/- (Rupees Fifteen Thousand) as full and final settlement amount and now nothing survive in the present reference petition.

4. Shri Pankaj Nanglia, Dy. Registrar of the respondent University has stated that the matter stood amicably resolved between the parties and the respondent University has paid a sum of Rs. 15,000/- (Rupees Fifteen Thousand) as full and final settlement amount of claim arising out of reference No. 183 of 2018. The amount shall be paid to the petitioner within a period of thirty days.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a–vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the late petitioner stood amicably resolved and finally compromised by the petitioner and the respondent University has paid a sum of ₹ 15,000/- (Rupees Fifteen Thousand) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 183 of 2018.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated**. **The Respondent University is directed to pay agree amount *i.e.* Rs. 15000/- within a period of thirty days from today otherwise the same shall carry interest @ 9% per annum.**

7. The reference is answered accordingly and the award is passed as per the statements of parties, which shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-8-2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla,*
Camp at Nalagarh.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number	:	158 of 2018
Instituted on	:	06-09-2018
Decided on	:	01-08-2022

Sushil Kumar s/o Shri Achar Singh, r/o Village Kalu Jhanda, P.O. Madhala, Tehsil Baddi, District Solan, H.P. . . *Petitioner*.

Versus

The Registrar, Maharaja, Agrasen University, Pinjore-Nalagarh Highway, Nanakpur, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act

For the Petitioner : Shri B. R. Poswal, Adv.

For the Respondent : Shri Rajiv Sharma, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 21-05-2018, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

> "**Whether termination of services of Shri Sushil Kumar s/o Shri Achar Singh, r/o Village Kalu Jhanda, P.O. Madhala, Tehsil Baddi, District Solan, H.P. by the Registrar, Maharaja, Agrasen University, Pinjore-Nalagarh Highway, Nanakpur, Tehsil Baddi, District Solan, HP *w.e.f.* 28-09-2017 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, seniority, back-wages, and compensation the above workman is entitled to from the above employer/management?"**

2. To the fore, Shri Sushil Kumar (hereinafter to be referred as the petitioner) has instituted the claim petition against the **Registrar, Maharaja, Agrasen University, Pinjore-Nalagarh Highway, Nanakpur, Tehsil Baddi, District Solan, H.P.** (**hereinafter to be referred as respondent University**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that he was employed by the respondent University as helper in a Electric Lab. *w.e.f.* 21-6-2013 and was drawing the salary of ₹ 7700/- per month. The petitioner has completed the service of more than 240 working days continuously with the respondent before his illegal termination of services on 31-7-2017. The services of the petitioner were terminated arbitrarily in an illegal manner without complying with the provisions of the Act. The respondent University has framed false charges and allegations against the petitioner and without conducting legal and proper enquiry, terminated the services of the petitioner. The petitioner met with an accident and remained on leave *w.e.f.* 14-04-2017 to 31-07-2017. The petitioner raised the demand before the Labour-*cum*-Conciliation Officer in the conciliation

proceedings as a result of which the petitioner again joined on 20-09-2017 but his services were again terminated on 28-09-2017.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**It is therefore, prayed that your honour may be pleased to direct the respondent to reinstate the services of the petitioner and clear all his pending dues including amount of back-wages, seniority, past service benefits in favour of the plaintiff, in the interest of justice."**

5. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference and the petitioner filed a false complaint against the respondent before the National Human Rights Commission, which was later on closed.

6. On merits, it is submitted that the petitioner remained absent from his duties *w.e.f.* 14-07-2017 to 19-09-2017 without any intimation. The services of the petitioner were terminated by the respondent University as per the provisions of the Act by paying one month advance salary in lieu of advance notice. It is submitted that the petitioner was engaged as helper and at that time he was handicapped and working with only one leg. The petitioner met with an accident and his working leg got multi fractures and he became totally inefficient to perform his duties. After the accident, the petitioner resumed his duties on 20-09-2017 as his services were not terminated. The petitioner was not sincere to his job and many times he misbehaved with his seniors. The petitioner is not competent to do any work in the Electric Lab., after his accident, hence, he was rightly relieved from his services. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination vide Court order dated 22-11-2019, as under:

1. Whether the termination of the petitioner is voilative of the provisions of the Industrial Disputes Act, as alleged? If so its effect thereto? . .*OPP.*

2. Whether the claim is not maintainable as the petitioner has concealed material facts from this Court as alleged? If so, its effect thereto? . .*OPR.*

3. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1 Yes

Issue No. 3	No
Relief	Reference is allowed awarding reinstatement in service with seniority and continuity along-with back-wages @ 25% to the petitioner.

Reasons for findings

Issue No. 1 :

12. To substantiate its case, the petitioner namely Shri Sushil Kumar has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition.

13. In cross-examination, he admitted that he was working as helper in electric Lab with the respondent institute from 2013. He further admitted that he was relieved from his duties on 28-09-2017. He also admitted that he was handicapped at the time of joining of his duties. He admitted that during the course of employment, he met with an accident and suffered multiple fractures. He denied that after the accident, he is not able to do his job as helper in Electric Lab. He denied that he absented from the duty from 14-04-2017 to 19-09-2017.

14. In order to rebut, the respondent University has examined two RWs. Shri Paramjeet Singh, Assistant Registrar with respondent University, tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence complaints dated 09-01-2017 (RW-1/B) and 21-09-2017 (RW-1/C).

15. During cross-examination, he admitted that the petitioner worked as helper in Electric Lab *w.e.f.* 21-06-2013 and he worked continuously till his termination. He further admitted that no such notice regarding his behavior was given to the petitioner.

16. Shri Pankaj Nanglia, Dy. Registrar of the respondent University has appeared into the witness dock as (RW-2), who also tendered in evidence his sworn in affidavit (RW-2/B), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice (RW-2/B), reply dated 23-12-2017 Mark RX-1 and reply dated 20-8-2017 Mark RX-2.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri B.R Poswal, Learned counsel for the petitioner has contended with all vehemence that the petitioner is squarely covered under the definition of "*workman" under* the Act and that the educational institutions are an industry in terms of Section 2(j) of the Act. The petitioner was engaged as helper by the respondent University and his services have been terminated orally without complying with the provisions of the Act as no notice or compensation was paid to him. It is therefore prayed that the claim filed by the petitioner may kindly be allowed.

19. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent University urged that the present claim petition is not maintainable as the university being an educational institution does not fall within the ambit of the Act. Moreover, the services of the petitioner were never terminated but he was relieved from his job as after accident he was not able to perform his job in the Electric lab. It is therefore prayed that the claim petition may kindly be dismissed.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

The Industrial Disputes Act, 1947, is:

"*An act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes".*

Section 2(s) defines a Workman as:

"*2(s). "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharge or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—*

(*i*) *who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*

(*ii*) *who is employed in the police service or as an officer or other employee of a prison; or*

(*iii*) *who is employed mainly in a managerial or administrative capacity; or*

(*iv*) *who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature]"*

Section 2(oo) lays down the concept of retrenchment as:

"*Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*

(a) voluntary retirement of the workman;

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

(c) termination of the service of a workman on the ground of continued ill-health"

22. I am unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondents. The question "who is a workman" has been well settled by various judgments of the Hon'ble Supreme Court. In the case of ***H.R. Adyanthaya* vs. *Sandoz (India) Ltd. (1997) 5 SCC 737,*** a Constitution Bench of the Hon'ble Supreme Court has held as under:

> ***"..We thus have three Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz, manual, clerical, supervisory or technical and two two-judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge Bench decisions which have without referring to the decisions in May & Baker, WIMCO and Bunnah Shell cases (supra) have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."***

23. The issue whether an educational institution is an "industry", and its employees are "workmen" for the purpose of the Act has been answered by a Seven Judge Bench of the Hon'ble Supreme Court way back in the year 1978 in the case of ***Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors. (1978) 2 SCC 2013.*** It was held that educational institution is an industry in terms of Section 2(j) of the Act, though not all of its employees are workmen. It was held as under:

> "*The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesis, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations."*

24. A perusal of the above mentioned two judgments of the Hon'ble Supreme Court clearly show that the definition of "workman" as given in Section 2(s) of the Act has been interpreted in the most wide terms. Even otherwise the import of the provisions itself is wide ranging. It has been defined in such a way to include any person doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Once a person is engaged for hire or reward, oblivious of the fact that whether the terms of employment are expressed or implied, a person would fall within the parameters of a "workman" atleast for the purposes of this Act. Even if a person is working on contract it cannot be said that he does not fall within the definition of a "workman". It could be that being a contractual employee his disengagement may not fall within the definition of "retrenchment" but the same would be dependent upon the requirements of Sub Section (bb) of the provisions of Section 2(oo) of the Act. However, merely being a contractual employee does not mean that a person will not fall within the definition of "workman". So, a contractual labourer/field assistant employed by a university, being an unskilled person, is a workman for the purpose of the Act.

25. In the instant case, it is categorically proved on record that at the time of the engagement of the services of the petitioner, he was physically handicapped. The petitioner has been engaged as helper *w.e.f.* 21-6-2013, though, this date has not been admitted by the respondent University. According to the respondent University, the petitioner was engaged on 1-10-2019. Fair enough, neither the petitioner nor the respondent university had placed on record any worth of credence any documentary proof to prove that the petitioner was engaged on 1-10-2013 and not 21-6-2013. It is an admitted fact that the petitioner met with an accident and had remained under medical treatment *w.e.f.* 14-07-2017 to 20-09-2017. The services of the petitioner were terminated *vide* notice dated 20-09-2017 on the ground of fitness. It is considered that the petitioner is not fit for the job, thereafter, the services of the petitioner were dispensed with as per the provisions of section 2oo of the Act, hence, the petitioner is relieved from his work with immediate effect. There is no denying fact that the petitioner had resumed his duties on the intervention of Labour Officer. I failed to understand that when the petitioner had joined/resumed his duties on 20-07-2017, than what are those circumstances that had taken place in between eight to nine days that led the respondent university to terminate the services of the petitioner. There were two complaints (RW-1/B) and (RW-1/C) placed on record mentioning therein that the petitioner has misbehaved and threatened the officer during duty time. It is again admitted fact that the services of the petitioner were not terminated till 20-09-2017, when the petitioner had resumed his duties, therefore, both the complaints (RW-1/B) and (RW-1/C) assumes no significance. Admittedly, the petitioner remained absent from his job *w.e.f.* 14-04-2017 to 19-09-2017. According to the petitioner, he had duly informed the respondent University that he met with an accident and at the time of resumption of his duties, he produced medical certificate. It is pleaded from the side of the respondent University that the absence of the petitioner was willful and unauthorized. The services of the petitioner were terminated and he was relieved as per the term and conditions of the appointment letter and under the provisions of the Act.

26. Though, the entire case set up from the side of the petitioner stood duly substantiated by Deputy Registrar of the respondent University (RW-2), who has admitted the entire case of the petitioner. Admission is the best form of the evidence. The respondent witness (RW-2) has admitted that the petitioner had worked with the respondent University from 2013 to 2017 on monthly salary of ₹ 7700/-. He has admitted that the petitioner has completed 240 working days in a calendar year with the University. He further admitted that the petitioner met with an accident on 14-04-2017. He also admitted that the conciliation proceedings were initiated before the Labour Officer between the parties. He admitted that the matter was settled before the Conciliation Officer. He denied that the services of the petitioner were terminated without assigning any reason.

27. Here, it is also relevant to pin point various clauses of Section 2 of The Rights of Persons with Disability Act, 2016 which, reads as hereunder :

(*h*) "discrimination" in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;

(*i*) "establishment" includes a Government establishment and private establishment;

(j) to (u)……

(*v*) "private establishment" means a company, firm, cooperative or other society, associations, trust, agency, institution, organization, union, factory or such other establishment as the appropriate Government may, by notification, specify;

(*x*)…..

(*y*) "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;

(*z*)……

(*za*) "rehabilitation" refers to a process aimed at enabling persons with disabilities to attain and maintain optimal, physical, sensory, intellectual, psychological environmental or social function levels;

28. The rights and entitlement of physically disable persons are provided under Chapter-II under section 3 & 6 of the Act, which reads as under:

"3. Equality and non-discrimination.—

(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

5….

6. Protection from cruelty and inhuman treatment.—

(1) The appropriate Government shall take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.

(2) No person with disability shall be a subject of any research without,—

(*i*) his or her free and informed consent obtained through accessible modes, means and formats of communication; and

(*ii*) prior permission of a Committee for Research on Disability constituted in the prescribed manner for the purpose by the appropriate Government in which not less than half of the Members shall themselves be either persons with disabilities or Members of the registered organisation as defined under clause (z) of section 2.

29. Candidly speaking, after careful scrutiny, perusal and meticulous examination of the material facts, it is crystal clear that the petitioner was physically handicapped at the time of his initial engagement with the respondent University. The petitioner remained on the rolls of the respondent University, however, his services have been terminated by the respondent University on the ground that he was not able to perform his duties. To my mind, just by applicability of clause, without following the settled principles of natural justice are in violation of the provisions of the I.D Act. I failed to understand that when the petitioner was reinstated on the intervention of Labour Officer, then what was the occasion to make him double jeopardized, on the similar grounds, by terminating/relieving him from service. Admittedly, the provisions of Rights of Person with Disabilities Act 2016, are applicable to the Government as well as Private Establishment. It is the rule of law that no person with physical disability during the course of his employment shall be discriminated on the ground of disability. Rather, he enjoys his rights with dignity and respect, similar to others.

30. The next contention raised on behalf of the respondent is that the petitioner has abandoned the job on his own as he had never intimated the respondent University for his alleged accident. **Our own Hon'ble High Court in case titled as State of Himachal Pradesh through Secretary Forests to the Government of Himachal Pradesh and Another** Vs. **Achhar Singh, CWP No. 2815 of 2016** decided on 04-03-2022 has observed that the plea of abandonment cannot be taken in the air, rather cogent an convincing evidence is required to be led to prove this fact. In this case the respondent has miserably failed to place on record any notice issued to the petitioner calling upon him to resume his duties nor any enquiry in this regard was conducted. Therefore, it cannot be said that the petitioner has abandoned the job on his own.

31. The next question which arises for determiantion that whether the termination of the services of the petitioner w.e.f. 28-09-2017, is voilative of the provisions of the Act. It is an admitted fact taht the petitioner had completed 240 working days with the respodnent prior to the date of his termiantion. It is also admitted position on record that before terminataing the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(*a*) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(*b*) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(*c*) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

32. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

33. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

34. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be

illegal, unlawful and unjustified. Resultantly, the notice dated 28-09-2017 issued to the petitioner regarding relieving him from services, is hereby set aside and quashed.

35. For the foregoing reasons, I have no hesitation in comming to the conclusion that the termiantion of the services of the petitioner by the respondent University *w.e.f.* 28-09-2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified, hence, the petitioner is held entitled for re-instatement in service on the same post and place with seniority and continuity along-with back-wages @ 25%. The issue is answered accordingly.

Issue No.3:

36. On this issue, the respondent University has raised the objection of maintainability of claim petition as the petitioner has concealed material facts from this Court. According to respondent University, the services of the petitioner were relieved on the report that he was unable to perform his duties, however, no such report has been placed on record. It is the respondent University, who has suppressed material facts from the Court. It is an admitted position on record that the respondent University had engaged the services of the petitioner as helper in hte Electric Lab in the year 2013. The petitioner had worked continuously till 28-09-2017 on which date his services were terminated. Admitedly, he remained absent from job without any sanctioned leave *w.e.f.* 14-04-2017 to 17-9-2017 and resumed his duties after recovery on 20-9-2017. It is also admitted position on record that the services of the petitioner were not termianted till 19-07-2017. This Court legitimately conclud that the termiantion of the services of the petitioner vide relieving order dated 28-09-2017 under section 2(oo) of the Act is in clear cut violation of the provisions of the Act. The sole criteria regarding the termiantion or retrenchment of the services of the petitioner from the side of the respondent is that there were complaints against the petitioner. The respondent has also placed on record the complaints (RW-1/B) and (RW-1/C), both written by same person Shri Paramjeet Singh (RW-1) on 09-01-2017 and 21-09-2017. Both the complaints assumes no significance in the eyes of law. Since, the respondent University failed to prove this issue, the same is answered in favour of the petitioner and against the respondent University.

Relief :

37. As a sequent effect, in the light what has been discussed hereinabove while deciding issues No.1 & 2, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent university to re-engage the services of the petitioner on the same post and place from where he was relieved. The respondent University is also directed to grant seniority and continuity to the petitioner along-with back-wages @ 25% from the date of his illegal termination till his reengagement, failing which the same shall carry interest at the rate of 9% (nine percent) per annum to be paid by the respondent University to the petitioner. The reference is answered in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**
CAMP AT RAMPUR BUSHAHR.

Reference Number : 129 of 2019

Instituted on : 16-09-2019

Decided on : 01-08-2022

Rajender Singh S/o Shri Salig Ram r/o Village Tutu, P.O. Delath, Sub-Tehsil, Nankhari, District Shimla, H.P. . .*Petitioner.*

Versus

The Employer/ Manager, M/s Narendra Hotel & Restaurant, Tehsil Rampur Bushahr, District Shimla, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner: Shri Khushi Ram Verma, Advocate

For Respondent: Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 27-08-2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

> "**Whether termination of the services of Shri Rajender Singh s/o Shri Salig Ram Village Tutu, P.O. Delath, Sub Tehsil Nankhari, District Shimla H.P. by the employer/ Manager M/s M/s Narendra Hotel & Restaurant, Tehsil Rampur Bushahr, District Shimla, H.P. *w.e.f.* 01-08-2018 is legal and justified? If not, what relief including re-instatement, amount of back wages, seniority, past service benefits and compensation the above worker is entitled to firm the above employer**?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to whichthe petitioner has filed his statement of claim praying therein for his reinstatement with all service benefits including back-wages.

3. Shri Kushal Chand, Authorized Representative appearing on behalf of the petitioner has categorically stated *vide* his separate statement that he had worked with the respondent Hotel Bar & Restaurant on monthly salary of ₹ 7000/-. He had raised the dispute qua the termination of his service by the respondent *w.e.f.* 01-08-2018 upon which this Court has received the reference from the appropriate government *vide* notification dated 27-08-2019. He further stated that the industrial dispute raised by him stood amicably resolved interse the parties, to which he has received the full & final payment of ₹ 40,000/- *vide* cheque No. 154430 dated 01-08-2022, as lump sum compensation to the claim raised by him in lieu of reinstatement, back-wages, seniority, past service benefits and compensation. The aforesaid statement was read-over and explained to him which was duly acceptable. Nothing survive in the present petition. He tendered copy of his Aadhar

Card as Identity proof (PA) and copy of Aadhar Card of petitioner Shri Rajender Singh (PA-1), in evidence.

4. Shri Vidya Sagar, Proprietor-*cum*-owner of the respondent Hotel Bar & Restaurant has stated that he is the owner of the respondent Hotel. The petitioner was working with the respondent Hotel on monthly salary of ₹ 7000/-. The petitioner has raised the dispute qua the termination of his services by the respondent *w.e.f.* 01-08-2022 to which this Court has received the reference from the appropriate government *vide* notification dated 27-08-2019. The aforesaid reference petition qua the industrial dispute raised by the petitioner stood amicably resolved interse the parties, to which the petitioner has been paid full and final payment of ₹ 40,000/- (₹ Forty Thousand) *vide* cheque No. 154429 dated 01-08-2022, which has been received by the petitioner as lump sum compensation to the claim raised by him in lieu of reinstatement, back-wages, seniority, past service benefits and compensation. He tendered in evidence copy of cheque (PB). To this effect his statement recorded separately.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a–vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the late petitioner stood amicably resolved and finally compromised by the petitioner and the respondent Hotel Bar & Restaurant has paida sum of ₹ 40,000/- (Rupees Forty Thousand) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 129 of 2019.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 40,000/- (Rupees Forty Thousand only)**.

7. The reference is answered accordingly and the award is passed as per the statements of parties and copy of Aadhar Cards (PA) and (PB), Identity Card (PA-1) and cheque (PB), which shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced :
01-08-2022

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla,
Camp at Rampur Bushahr.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**
CAMP AT RAMPUR BUSHAHR

Reference Number	:	130 of 2019
Instituted on	:	16-09-2019
Decided on	:	01-08-2022

Kushal Chand s/o Shri Main Chand, r/o Village Tutu, P.O. Delath, Sub Tehsil, Nankhari, District Shimla, H.P. . .*Petitioner.*

Versus

The Employer/ Manager, M/s Narendra Hotel & Restaurant, Tehsil Rampur Bushahr, District Shimla, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner: Shri Khushi Ram Verma, Advocate

For Respondent: Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 27-08-2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the services of Shri Kushal Chand s/o Shri Main Ram Village Tutu, P.O. Delath, Sub Tehsil Nankhari, District Shimla H.P. by the employer/ Manager M/s M/s Narendra Hotel & Restaurant, Tehsil Rampur Bushahr, District Shimla, H.P. *w.e.f.* 01-08-2018 is legal and justified? If not, what relief including re-instatement, amount of back wages, seniority, past service benefits and compensation the above worker is entitled to firm the above employer**?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim praying therein for his reinstatement with all service benefits including back-wages.

3. Shri Kushal Chand, petitioner has categorically stated *vide* his separate statement that he had worked with the respondent Hotel Bar & Restaurant on monthly salary of ₹ 7000/-. He had raised the dispute qua the termination of his service by the respondent *w.e.f.* 01-08-2018 upon which this Court has received the reference from the appropriate government vide notification dated 27-08-2019. He further stated that the industrial dispute raised by him stood amicably resolved interse the parties, to which he has received the full & final payment of ₹ 30,000/- *vide* cheque No. 154429 dated 01-08-2022, as lump sum compensation to the claim raised by him in lieu of reinstatement, back-wages, seniority, past service benefits and compensation. The aforesaid statement was read-over and explained to him which was duly acceptable. Nothing survive in the present petition. He tendered copy of Aadhar Card (PA) in evidence.

4. Shri Vidya Sagar, Proprietor-*cum*-owner of the respondent Hotel Bar & Restaurant has stated that he is the owner of the respondent Hotel. The petitioner was working with the respondent Hotel on monthly salary of ₹ 7000/-. The petitioner has raised the dispute qua the termination of his services by the respondent *w.e.f.* 01-08-2022 to which this Court has received the reference from the appropriate government *vide* notification dated 27-08-2019. The aforesaid reference petition qua the industrial dispute raised by the petitioner stood amicably resolved interse the parties, to which the petitioner has been paid full and final payment of ₹ 30,000/- (₹ Thirty Thousand) *vide* cheque No. 154429 dated 01-08-2022, which has been received by the petitioner as lump sum compensation to the claim raised by him in lieu of reinstatement, back-wages, seniority, past service benefits and compensation. He tendered in evidence copy of cheque (PB). To this effect his statement recorded separately.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a–vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the late petitioner stood amicably resolved and finally compromised by the petitioner and the respondent Hotel Bar & Restaurant has paida sum of ₹ 30,000/- (Rupees Thirty Thousand) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference No. 130 of 2019.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying ₹ 30,000/- (Rupees Thirty Thousand only)**.

7. The reference is answered accordingly and the award is passed as per the statements of parties and copy of Aadhar Card (PA) and cheque (PB), which shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1-8-2022

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla,
Camp at Rampur Bushahr.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 129 of 2017

Instituted on : 04-08-2017

Decided on : 01-08-2022

Sandeep s/o Shri Uttam Chand r/o 3247/1, HBC, Dhanas Chandigarh, UT . .*Petitioner.*

Versus

The Registrar, ICFAI, University, Baddi, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act

For the Petitione : Shri N.C Ghai, Adv.

For the Respondent : Shri Vishal Sharma, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 15-07-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

> "**Whether termination of services of Shri Sandeep s/o shri Uttam Chand, r/o 3247/1, HBC, Dhanas Chandigarh, UT *w.e.f.* 28-08-2016 by the Registrar, ICFAI, University, Baddi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged is legal and justified? If not, what relief including reinstatement, seniority, amount of back-wages, past service benefits and compensation the above workman is entitled to from the above employer/ University?"**

2. To the fore, Shri Sandeep (**hereinafter to be referred as the petitioner**) has instituted the claim petition against the **Registrar, ICFAI, University, Baddi, H.P.** (**hereinafter to be referred as respondent University**) under the provisions of the Act.

3. Material facts necessary for the disposal of the present reference petition, as alleged by the petitioner in the statement of claim, are thus that he was engaged by the respondent University to the post of Executive Development and he was terminated under conspiracy laid down by Mr. Mukund (HOD) as the petitioner opposed the corrupt activities of Mr. Mukund on the educational tours. The petitioner was tortured by Mr. Mukund due to which the petitioner remained under treatment of depression at PGIMER Chandigarh and ultimately the services of the petitioner have been terminated on 12-08-2016 mentioning therein that the performance of the petitioner is poor whereas at the time of joining, there was no admission oriented target. The services of the petitioner have been terminated without following any procedure and that too without any enquiry. The petitioner approached the Vice Chancellor of respondent University, where Mr. Mukund pushed the petitioner out of the room of Vice Chancellor. The said incident was also brought to the notice of Inquiry Officer, Barotiwala Police Station vide complaint dated 13-08-2016. Not only this, the petitioner was asked to report to the Chandigarh Office during the notice period which was found closed.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> **"Therefore, in view of the facts and circumstances mentioned on pre-pages it is respectfully prayed before your Lordship to:**
>
> **Declare the termination of undersigned wrongful and illegal and set aside the same as it was an arbitrary, illegal, unjust and malafide action on the part of the ICFAI university, Baddi.**
>
> **To reinstate the services of the petitioner with full back-wages with interest, keeping in vie the unemployment status of the petitioner since 12-08-2016 and the family livelihood dependence.**
>
> **Burden the respondents with heavy costs and award compensation to the tune of ₹ 50000/- to the applicant for mental agonies, physical harassment and financial hardship.**
>
> **Pass such orders, directions and grant such other relief in the favour of the undersigned as deemed fit and proper in view of the facts and circumstances of the case."**

5. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, not come to the Court with clean hands and the petitioner does not fall under the category of workman.

6. On merits, it is submitted that the petitioner indulged in grave misconduct during the course of his employment with the respondent university. The notice dated 12-08-2016, issued by the respondent University clearly reflect that earlier the targets regarding the admissions was 95 whereas the petitioner got admitted only 2 students till 22-03-2016. Thereafter the target was reduced to 30 at the request of Mr. Mukund against whom the petitioner had registered a false complaint under section 107/150 Cr.P.C on 1-9-2016. Another complaint dated 17-11-2016 was lodged by the petitioner but in both the complaints nothing fruitful was found. The petitioner was transferred to Chandigarh office but he failed to report for duty at Chandigarh Office. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination vide Court order dated 24.08.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 28-08-2016, without complying with the provisions of the Industrial Disputes Act, 1947, is illegal and unjustified? . .*OPP.*

2. If issue No.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable as alleged? . .*OPP.*

4. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No. 3	No.
Relief.	Reference is allowed awarding reinstatement in service with seniority and continuity but without back-wages.

Reasons for findings

Issues No.1 & 2 :

12. Both these issues are intermingled and inter connected, as mutually existent and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. In order to substantiate its case, the petitioner namely Shri Sandeep has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence offer letter (P-1), copy of 30-07-2018 (P-2), letter dated 21-09-2018 (P-3), OPD Card (P-4), termination letter (P-5), Police report (P-6), letter dated 19-8-2016 (P-7) and transfer order (P-8).

14. In cross-examination, he admitted that offer letter (P-1) had been issued to the petitioner after being read over. He denied that the targets had been fixed at the time of appointment itself. He admitted that he had to report fortnightly at Sector-34 Chandigarh *i.e.* the Head Office of the University. He further admitted that he had filed the complaint with the Police against the HOD. As mentioned in (P-6). He denied to have received many mails for nonperformance.

15. In order to rebut, the respondent University has examined Shri Mohinder Kumar Soni, Registrar of the respondent University as (RW-1), who tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence appointment letter Mark R-1, confidential agreement Mark R-2, Mail statement Mark R-3 to mark R-9, Mobile bill Mark R-10, letter dated 12-08-2016 Mark R-11, mail dated 17-8-2016 Mark R-12, mail dated 17-8-2016 Mark R-13, mail dated 19-08-2016 Mark R-14, attendance sheet Mark R-15 and attendance report Mark R-16.

16. During cross-examination, he deposed that he is working with the respondent University for the last eight years as Assistant Professor and since 23-3-2020, he is officiating as Registrar. He feigned ignorance regarding the terms and conditions of the appointment letter made by Mr. Bindu, Chief Administrative Officer. He admittred that the appointment was approved by the Head Office at Hyderabad. He admitted that there is no target shown in the appointment letter. He also admitted that the targets required to be set in the meeting of the marketing team and University. He feigned ignorance regarding the setting up targets. He admitted that the admissions are open only after declaration of 10+2 result after April of every year. He admitted that the petitioner was asked to achieve target of 95 admissions in March 2016. He admitted that no show cause notice or chargesheet was served upon the petitioner. He also admitted that one kalandra was presented against Mr. Mukund Kumar. He feigned ignorance that the petitioner himself requested to transfer him to Chandigarh office. He denied that the petitioner was harassed by transferring him to Chandigarh.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri Rahul Chandel, Learned counsel for the petitioner has contended with all vehemence that the petitioner is squarely covered under the definition of "*workman" under* the Act and that the educational institutions are an industry in terms of Section 2(j) of the Act. The petitioner was engaged as Executive Development by the respondent University and his services have been terminated orally without complying with the provisions of the Act as no notice or compensation was paid to him. He further argued that the petitoiner was transferred to Head Office Chandigarh but teh same was found closed. It is therefore prayed that the claim filed by the petitioner may kindly be allowed.

19. *Per contra*, Shri Vishal Sharma, Ld. Counsel for the respondent University urged that the the present claim petition is not maintainable as the university being an educational institution

does not fall within the ambit of the Act. Moreover, the petitioner had failed to achieve his targets, hence, his services were rightly terminated in accordance with the terms and conditions stipulated in his appointment letter. It is therefore prayed that the claim petition may kindly be dismissed.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

The Industrial Disputes Act, 1947, is:

"*An act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes".*

Section 2(s) defines a Workman as:

"*2(s). "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharge or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—*

(*i*) *who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*

(*ii*) *who is employed in the police service or as an officer or other employee of a prison; or*

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature"

Section 2(oo) lays down the concept of retrenchment as:

"*Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*

(a) voluntary retirement of the workman;

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its

expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

(c) termination of the service of a workman on the ground of continued ill-health"

22. Verily, I am unable to cope with the contention advanced by the learned counsel appearing on behalf of the respondents. The question "who is a workman" has been well settled by various judgments of the Hon'ble Supreme Court. In the case of ***H.R. Adyanthaya vs. Sandoz (India) Ltd. (1997) 5 SCC 737,*** a Constitution Bench of the Hon'ble Supreme Court has held as under:

"..We thus have three Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz, manual, clerical, supervisory or technical and two two-judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge Bench decisions which have without referring to the decisions in May & Baker, WIMCO and Bunnah Shell cases (supra) have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have,therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."

23. The issue whether an educational institution is an "industry", and its employees are "workmen" for the purpose of the Act has been answered by a Seven Judge Bench of the Hon'ble Supreme Court way back in the year 1978 in the case of ***Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors. (1978) 2 SCC 2013.*** It was held that educational institution is an industry in terms of Section 2(j) of the Act, though not all of its employees are workmen. It was held as under:

"***The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesis, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as***

industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations."

24. A perusal of the above mentioned two judgments of the Hon'ble Supreme Court clearly show that the definition of "workman" as given in Section 2(s) of the Act has been interpreted in the most wide terms. Even otherwise, the import of the provisions itself is wide ranging. It has been defined in such a way to include any person doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Once a person is engaged for hire or reward, oblivious of the fact that whether the terms of employment are expressed or implied, a person would fall within the parameters of a "workman" atleast for the purposes of this Act. Even if a person is working on contract it cannot be said that he does not fall within the definition of a "workman". It could be that being a contractual employee his disengagement may not fall within the definition of "retrenchment" but the same would be dependent upon the requirements of Sub Section (bb) of the provisions of Section 2(oo) of the Act. However, merely being a contractual employee does not mean that a person will not fall within the definition of "workman". So, a contractual labourer/field assistant employed by a university, being an unskilled person, is a workman for the purpose of the Act.

25. Thus, from a careful perusal and meticulous examination of the record, it is manifestly clear and established on record that the petitioner was engaged by the respondent university *vide* appointment letter dated 04-12-2015, as Executive Development, on contract basis upto 31-12-2016. There was a confidentiality agreement executed between the parties to hold any confidential information, in its strictest confidence and not to disclose it to any third party except as it strictly necessary for the performance of higher studies. In response to the appointment letter dated 4-12-2015, the petitioner had joined his duties *vide* joining report dated 21-12-2015 along-with medical fitness. It is also apparent on the face of record that *vide* letter dated 22-3-2016, the petitioner along-with other workmen/employee, have been transferred to Chandigarh Office *w.e.f.* 22-3-2016. Thereafter, there was lot of communications held between the parties regarding the so called, harassment, torture, explanation and replies etc. in the form of various E-mails exchange between the parties. So far as concerning the transfer of the services of the petitioner to Chandigarh Office, it is quite clear that the said office had been shut down because of the service tax issue between the landlord and the respondent university. It is alleged from the side of the petitioner that the respondent University had knowingly and intentionally transferred the services of the petitioner to Chandigarh Office as they were well within the knowledge was closed. It is also transpired from the documentary proof that the Chandigarh Office reopened *w.e.f.* 23-8-2017 and all its operations resumed in the said office thereafter. There are also allegations that the petitioner had misused the Mobile Phone given to him by the respondent University. Though, the respondent University tendered into evidence call detail report of Idea Cellular No. 8350802294, but not satisfactorily proved on record. It is again proved on record that *vide* letter dated 22-8-2016, the petitioner was informed regarding the poor performance and the University is constrained to terminate the services of the petitioner after giving fifteen day's notice and subsequently the contract shall stand terminated after the expiry of fifteen days' *i.e.* 27-8-2016. During these fifteen days, the petitioner shall be reporting for duties at Chandigarh Office. So, finally the services of the petitioner were terminated *vide* termination letter dated 12-8-2012, *w.e.f.* 28-8-2012.

26. On the contrary, the services of the petitioner were terminated on the ground of transferring his services to Chandigarh to remain present there from 12-8-2016 to 27-8-2016, whereas the said office was closed due to ongoing issue of service tax between landlord and respondent University.

27. The only respondent witness Shri Mahender Kumar (RW-1) has deposed that he is officiating Registrar since 28-8-2020. He feigned ignorance about the incident prior to 2020. He admitted that the petitioner was appointed on its approval from the Head Office. He also admitted that there were no targets shown in the appointment letter. He admitted that the admissions are open only after declaration of result of +2 examination. He admitted that no show cause notice or chargesheet has been served upon the petitioner.

28. Admittedly, the services of the petitioner were engaged *vide* appointment letter dated 4-12-2015. The petitioner had submitted his joining report on 21-12-2015. It is proved that the petitioner had worked continuously with the respondent University *w.e.f.* 21-12-2015 to 11-8-2016, however, he was shown absent *w.e.f.* 12-8-2016 to 27-8-2016 and his services were transferred to Chandigarh Office, which was found closed. Therefore, it cannot be said that the petitioner has absented himself wilfully from 12-8-2016 till 27-8-2016. It is an admitted fact that the petitioner had completed 240 working days with the respodnent prior to the date of his termiantion. It is also admitted position on record that before terminataing the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**

(*a*) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(*b*) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(*c*) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

29. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

30. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

31. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified. In my humble opinion there are certain distinct facts which cannot go unnoticed. Since, both the parties are involved in levelling allegations or counter allegations which have been arisen between the parties due to certain reason. According to the petitioner, he was subjected to harassment, tortured and threatened by one Shri Mukund. On the contrary, the respondent has levelled allegations that job profile of the petitioner was purely on performance basis and there was no sign of improvement. The conduct of the petitioner was not upto the mark and satisfactory. In this case the petitioner was rightly transferred and thereafter leading to his termination. Both the petitioner and respondent have relied upon documentary proof such as E-mails, confidential report, RTI information, complaint under section 107/150 Cr.P.C and other relevant documents. The transfer order issued by the respondent subsequently followed by the termination order definitely fall within the four corner of unfair labour practice and victimization. Admittedly, the principles of natural justice or salient provisions of the Act. Moreover, the transfer of the petitioner at the closed office further bolstered the plea of victimization and unfair labour practice at the behest of petitioner with double strength.

32. For the foregoing reasons, I have no hesitation in comming to the conclusion that the termiantion of the services of the petitioner by the respondent University *w.e.f.* 28-8-2016, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified, hence, the petitioner is held entitled for re-instatement in service on the same post and place with seniority and continuity but without back-wages. Both the issues are answered accordingly.

Issue No. 3:

33. In support of this issue no specific evidence has been led by the respondent University which could go to show that as to how the present petition is not maintainable especially when the same has been filed by the petitioner pursuant to the refernece sent by the appropriate government to this Court for adjudication. I find nothing wrong with this petition which is perfectably maintainable. Accordingly, this issue is answered in favour of the petitioner and agaisnt the respondent University.

Relief:

34. As a sequent effect, in the light what has been discussed hereinabove while deciding issues No. 1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent university for **reinstatement of the services of the petitioner on the same post and place from where he was relieved/terminated. The respondent University is also directed to grant seniority and continuity to the petitioner but without back-wages**.

35. In the peculiar facts and circumstances of the case, the parties are left to behind to bear their own costs respectively. The reference is answered in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 160 of 2020

Instituted on : 13-08-2020

Decided on : 01-08-2022

Lovely Kumar s/o Late Shri Murari Lal r/o Village Chailli, Lower Panthaghati, Shimla, H.P. . .*Petitioner.*

Versus

The Registrar AP Goyal University, Shoghi-Mehli Bye Pass Road, Shimla, HP.
. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Ms. Payal Kimta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 16-07-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether the termination of the services of Shri Lovely Kumar s/o Late Shri Murari Lal r/o Village Chailli, Lower Panthaghati, Shimla, H.P. b yteh Vice Chancellor/ Registrar AP Goyal University, Shoghi-Mehli Bye Pass Road, Shimla, H.P. *w.e.f.* 07-09-2019 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"**

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 160 of 2020 and accordingly, notices were issued to both the parties but neither the petitioner nor his Counsel had ever appeared before this Tribunal whereas Ms. Kalpana, Advocate had appeared for respondent on 07-01-2021.

3. This Court had been issuing notices continuously to petitioner through registered letter on the address given in reference notification itself, has been received back to this Court with the report that no addressee in the name is found. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court which seems that at present the petitioner is not interested to pursue his petition. Therefore, I am left with no other alternative but to decide the present application on the basis of material, whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. Whereas the State of Himachal Pradesh has framed rules called "The Industrial Disputes Rules, 1974."

Similarly, Rule 25 thereof which reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end.

Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up, as and when, anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 184 of 2021

Instituted on : 16-09-2021

Decided on : 01-08-2022

Sunit Kumar s/o Shri Om Prakash Village Palakhwala, P.O. Jharmajri, Tehsil Baddi, District Solan, H.P. . .*Petitioner.*

Versus

The Occupier/Factory Manager M/s Sobhagia Clothing Co., Plot No. 6 & 8 EPIP VPO Jharmajri, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 25-08-2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether the action of Occupier/Factory Manager M/s Sobhagia Clothing Co., Plot No. 6 & 8 EPIP VPO Jharmajri, Tehsil Baddi, District Solan, H.P. to transfer Shri Sunit Kumar s/o Shri Om Prakash Village Palakhwala, P.O. Jharmajri, Tehsil Baddi, District Solan, H.P. *w.e.f.* 01-03-2021 from Baddi Plant District Solan to Ludhiana Plant District Ludhiana (Punjab) is legal and justified? If not, what relief including reinstatement of service at present station along-with other consequential service benefits and compensation the above aggrieved workman is entitled to from the above stated Employer/Management?"**

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 184 of 2021 and accordingly, notices were issued to both the parties but neither the petitioner nor his Counsel had appeared before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court which seems that at present the petitioner is not interested to pursue his petition. Therefore, I am left with no other alternative but to decide the present application on the basis of material whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. The State of Himachal Pradesh has framed rules called "The Industrial Disputes Rules, 1974." Similarly, Rule 25 thereof which reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to

presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 105 of 2020

Instituted on : 14-07-2020

Decided on : 01-08-2022

Vivek s/o Shri Prem Singh r/o Village Chamrogi ki Nahan, P.O. Janot, Tehsil Pachhad, District Sirmaur, H.P. . .*Petitioner.*

Versus

1. The Director M/s New Grow Eden Farms Pvt. Ltd., Farm No. 50, Village Jonapur South West Delhi, New Delhi, 110047.

2. The General Manager, New Grow Eden Farms Pvt. Ltd., Branch Office at Malgia, P.O. Jaihar, Tehsil Pachhad, District Sirmaur, H.P. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 06-05-2020, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:

"**Whether termination of services of Shri Vivek, s/o Shri Prem Singh r/o Village Chamrogi ki Nahan, P.O. Janot, Tehsil Pachhad, District Sirmaur, HP by the (i) Director M/s New Grow Eden Farms Pvt. Ltd., Farm No. 50, Village Jonapur South West Delhi, New Delhi, 110047 (ii) the General Manager, New Grow Eden Farms Pvt. Ltd., Branch Office at Malgia, P.O. Jaihar, Tehsil Pachhad, District Sirmaur, H.P. during July 2019 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above management?"**

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 105 of 2020 and accordingly, notices were issued to both the parties. The petitioner had even appeared in person on 14-01-2021 and thereafter neither the petitioner nor his counsel/AR has put in appearance before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court which seems that at present the petitioner is not interested to pursue his petition. Therefore, I am left with no other alternative but to decide the present application on the basis of material whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. The State of Himachal Pradesh has framed rules called "The Industrial Disputes Rules, 1974."

Similarly, Rule 25 thereof which reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette.

11. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, SHIMLA

Reference Number	:	307 of 2020
Instituted on	:	23-11-2020
Decided on	:	01-08-2022

Gurusewak Singh s/o Shri Ajeet Singh r/o Mohalla Gobindgarh, Nahan, District Simour, H.P. . .*Petitioner.*

Versus

The Occupier/Factory Manager M/s Phoniex Udyog Ltd., VPO Moginand, Nahan Road, Kala Amb, District Sirmaur, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.

For the Respondent : Nemo.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 07-11-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of services of Shri Gurusewak Singh s/o Shri Ajeet Singh, r/o Mohalla Gobindgarh, Nahan, District Sirmaur, H.P. by the management of M/s Phoniex Udyog Ltd., VPO Moginand, Nahan Road, Kala Amb, District Sirmaur, H.P. *w.e.f.* 30-05-2020 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above worker is entitled to from the above management?"**

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 307 of 2020 and accordingly, notices were issued to both the parties. Shri Sandeep Chauhan, Advocate had ever appeared for the petitioner on 23-11-2020 and thereafter, neither the petitioner nor his counsel had appeared before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court which seems that at present the petitioner is not interested to pursue his petition. Therefore, I am left with no other alternative but to decide the present application on the basis of material whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. Whereas, the State of Himachal Pradesh has framed rules called "The Industrial Disputes Rules, 1974."

Similarly, Rule 25 thereof which reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette.

11. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 157 of 2018

Instituted on : 06-09-2018

Decided on : 01-08-2022

Mohan Lal s/o Shri Lachhi Ram, r/o Village San, P.O. Dadva, Tehsil Kasauli, District Solan, H.P.

Versus

The Managing Director, Vivek International Public School, Housing Board Phase-III, Baddi, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act

For the Petitioner : Shri Vishal Sharma, Adv.

For the Respondent : Ms. Neetu Singh, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 26-05-2018, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

"**Whether termination of services of Shri Mohan Lal s/o Shri Lachhi Ram, r/o Village San, P.O. Dadva, Tehsil Kasauli, District Solan, H.P., who was working as driver by the Managing Director, Vivek International Public School, Housing Board Phase-III, Baddi, District Solan, H.P. w.e.f. 07-04-2017, as alleged without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, seniority, back-wages, and compensation the above workman is entitled to from the above employer/ management?"**

2. To the fore, Shri Mohan lal (hereinafter to be referred as the petitioner) has instituted the claim petition against the **Managing Director, Vivek International Public School, Housing Board Phase-III, Baddi, District Solan, H.P. (hereinafter to be referred as respondent school)** under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that he was engaged as driver by the respondent school *w.e.f.* 08-04-2015 on monthly salary of ₹ 15,200/-. The petitioner worked with devotion, honesty and best of his abilities and was fully obeyed towards the management. The respondent school terminated the services of the petitioner on 07-04-2017 in an illegal manner, which was against the principles of natural justice as no opportunity of being heard was afforded to him.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"**It is therefore, prayed that this Hon'ble Court may kindly be pleased to pass an order to set aside the termination order dated 07-04-2017 passed by the respondent being illegal and void and is further prayed that the respondent may be directed to reinstate the services/employment of the applicant/petitioner with all monetary/consequential benefits and compensation for harassment the applicant/petitioner."**

5. The lis was resisted and contested by respondent by filing written reply whereby, it is submitted that the petitioner is absconding willfully and rendered himself liable to disciplinary action and as per the terms of agreement, since the petitioner has himself relinquished the engagement, the management is within its right to recover one month's salary in terms of contract. It is denied that the petitioner had worked with full devotion and honesty. The petitioner was habitual of remaining absent, without intimation and worked according to his command. The management had not terminated the services of petitioner, hence, there is no question of retrenchment and the provisions of the Act could not be applied. It is therefore prayed that the reference may be returned accordingly, also, holding that the workman is not entitled to any relief whatsoever. It is a bundle of lies.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination vide Court order dated 26.07.2019, as under:

1. Whether the termination of the petitioner w.e.f. 07.04.2017 is illegal being voilative of the provisions of the Industrial Disputes Act, as alleged? If so to what relief the petitioner is entitled to? . .*OPP*.

2. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Entitled to reinstatement with seniority and continuity but without back-wages.
Relief.	Reference is allowed awarding reinstatement in service with seniority and continuity but without back-wages.

Reasons for findings

Issue No.1:

11. To substantiate its case, the petitioner namely Shri Mohan Lal has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition.

12. In cross-examination, he admitted that he joined the respondent school as Driver in the year 2015. He denied that he was appointed for one year on probation. He admitted to have signed the contract Mark RA. He denied that he remained absent from the job without giving any intimation to the authorities. He further denied that he remained absent from his duties for 9 days in April, 2016, 20 days in May, 2016, 30 days in June 2016 and 21 days in July, 2017. He denied that

he was terminated on 7-4-2017. He admitted that the respondent vide letter Mark RB, had asked him to appear before Arbitrator on 28-2-2019, 8-3-2019, 21-5-2019 and 25-6-2019. He denied that he had abandoned the job since 8-4-2017. He also denied that he used to misbehave with the respondent management during service.

13. In order to rebut, the respondent school has examined Manoj Kumar, Promoter/ Manager of the respondent school, who has appeared into the witness dock as (RW-1), who also tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence minutes of meeting (RW-1/B), letter dated 19-4-2017 (RW-1/C), contract to service (RW-1/D), award of arbitrator (RW-1/E) letter dated 20-2-2019 (RW-1/F) and letter dated 13-7-2017 (RW-1/G).

14. In cross-examination, he denied that the petitioner was ousted from the school by pushing him back. He admitted that the services of the petitioner were not terminated by the respondent school. He further admitted that no notice, retrenchment compensation or chargesheet was served upon the petitioner. He admitted that the petitioner had joined the arbitration proceedings initiated by the respondent school. He denied that the petitioner was proceeded against ex-parte before the Arbitrator. He denied that after passing of the award by the Arbitrator, on the next date the services of the petitioner were removed.

15. This is the entire oral as well as documentary evidence adduced from the side of the parties.

16. Shri Vishal Sharma, Learned counsel for the petitioner has contended with all vehemence that the petitioner is squarely covered under the definition of "*workman" under* the Act and that the educational institutions are an industry in terms of Section 2(j) of the Act. The petitioner was engaged as driver by the respondent school and his services have been terminated orally without complying with the provisions of the Act as no notice or compensation was paid to him. It is therefore prayed that the claim filed by the petitioner may kindly be allowed.

17. *Per contra*, Ms. Nitu Singh, Ld. Counsel for the respondent school urged that the the present claim petition is not maintainable as the school being an educational institution does not fall within the ambit of the Act. Moreover, the services of the petitioner were never terminated but he had abandoned the job at his own. It is therefore prayed that the claim petition may kindly be dismissed.

18. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

19. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

The Industrial Disputes Act, 1947, is:

"*An act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes".*

Section 2(s) defines a Workman as:

"*2(s). "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for*

hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharge or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(*i*) *who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*

(*ii*) *who is employed in the police service or as an officer or other employee of a prison; or*

(*iii*) *who is employed mainly in a managerial or administrative capacity; or*

(*iv*) *who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."*

Section 2(oo) lays down the concept of retrenchment as:

"*Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*

(a) voluntary retirement of the workman;

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

(c) termination of the service of a workman on the ground of continued ill-health"

20. I am unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondents. The question "who is a workman" has been well settled by various judgments of the Hon'ble Supreme Court. In the case of ***H.R. Adyanthaya vs. Sandoz (India) Ltd. (1997) 5 SCC 737,*** a Constitution Bench of the Hon'ble Supreme Court has held as under:

"..We thus have three Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz, manual, clerical, supervisory or technical and two two-judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge Bench decisions which have without referring to the decisions in May & Baker, WIMCO and Bunnah Shell cases (supra) have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They

have,therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz.,manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."

21. The issue whether an educational institution is an "industry", and its employees are "workmen" for the purpose of the Act has been answered by a Seven Judge Bench of the Hon'ble Supreme Court way back in the year 1978 in the case of ***Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors. (1978) 2 SCC 2013.*** It was held that educational institution is an industry in terms of Section 2(j) of the Act, though not all of its employees are workmen. It was held as under:

"***The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesis, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations."***

22. A perusal of the above mentioned two judgments of the Hon'ble Supreme Court clearly show that the definition of "workman" as given in Section 2(s) of the Act has been interpreted in the most wide terms. Even otherwise the import of the provisions itself is wide ranging. It has been defined in such a way to include any person doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Once a person is engaged for hire or reward, oblivious of the fact that whether the terms of employment are expressed or implied, a person would fall within the parameters of a "workman" atleast for the purposes of this Act. Even if a person is working on contract it cannot be said that he does not fall within the definition of a "workman". It could be that being a contractual employee his disengagement may not fall within the definition of "retrenchment" but the same would be dependent upon the requirements of Sub Section (bb) of the provisions of Section 2(oo) of the Act. However, merely being a contractual employee does not mean that a person will not fall within the definition of "workman". So, a contractual labourer/field assistant employed by a school, being an unskilled person, is a workman for the purpose of the Act.

23. In the instant case, it is categorically proved on record that the petitioner was engaged as driver in the respondent school since 8-4-2015 on monthly salary of ₹ 15,200/-. According to the petitioner he had worked continuously till 7-4-2017, on which date his services were terminated by the respondent school without complying with the provisions of the Act and not adhered to the principles of natural justice. On the other hand, it is submitted on the part of the respondent that the services of the petitioner were engaged by entering into a contract of service executed between the parties on 08-04-2015. As per clause 19 of the contract, it is provided that where there arises any dispute or relating to the contract including any disciplinary action leading to the dismissal or removal from service or reduction in rank etc., shall be referred for arbitration of any person to be nominated by the Chairman of Society running the school and if the arbitrator fails or neglect to act or becomes incapacitated, the Chairman of the society shall nominate any other person to fill the vacancy of arbitrator.

24. In my humble opinion Shri Sushil Kumar Sharma, the Sole Arbitrator *vide* its award dated 13-08-2019, held that "the services of the delinquent official were not terminated by the management or the Principal and he left the services of his own accord, for his own reasons. Further he is liable to deposit one month's salary for the other default committed by him". It is not alleged or proved that the respondent school terminated the services of the petitioner and the petitioner is liable to deposit one month's salary for the other default committed by him. Evidently, it is averred in the Arbitral Award dated 13-8-2019, *vide* separate zimin order ranging from 9-4-2019 to 13-8-2019, the proceedings conducted by the Arbitrator. The reference received from the appropriate government is with regard to the termination of the services of the petitioner *w.e.f.* 7-4-2017 whereas the respondent school has relied upon the Arbitral Award passed by the Arbitrator which was commenced from 28-2-2019 and concluded on 13-8-2019. It also transpired from the zimin order dated 26-3-2019, that the petitioner was proceeded against ex-parte in the said proceedings and continued till 21-5-2019, on which date the petitioner appeared in person and filed an application for setting aside ex-parte order dated 26-3-2019. The reply to the said application was filed on 14-6-2019, rejoinder came to be filed on 4-7-2019. Thereafter, the case was adjourned to 18-7-2019 and on hearing arguments on application on 11-7-2019. Later on, it was adjourned to 25-7-2019, on which date the copy of order on application dated 17-5-2019, was handed over to Mohan Lal (petitioner herein). Then the Arbitrator had went on to conclude the proceedings by passing the award dated 13-8-2019.

25. It is quite evident from the perusal of the award passed by the Arbitrator, the proceedings of which were conducted after the receipt of the reference from the appropriate government vide notification dated 26-5-2018. All proceedings conducted by the Arbitrator are against the reference received from the appropriate government. As such all these proceedings and Arbitral Award dated 13-8-2019 passed by the Arbitrator assumes no significance in the eyes of law being nonest in the eyes of law and that too against the provisions of the Industrial Disputes Act, 1947. Moreover, in any case this Court/Tribunal comes to the conclusion that there is no termination order passed by the respondent school but it is the petitioner, who had absented himself and not attended the job on his own accord for his own reason.

26. Consequently, the only grouse of the respondent side is that the petitioner is gainfully employed and he is guilty of regular absentee. Admittedly, neither any notice of appearance nor any show cause notice has been issued to him before terminating his services. Here I am fortified with the view taken by **our own Hon'ble High Court in case titled as State of Himachal Pradesh through Secretary Forests to the Government of Himachal Pradesh and Another *Vs.* Achhar Singh, CWP No. 2815 of 2016** decided on 04-03-2022, that the plea of abandonment cannot be taken in the air, rather cogent an convincing evidence is required to be led to prove this fact. In this case the respondent has miserably failed to place on record any notice issued to the petitioner calling upon him to resume his duties nor any enquiry in this regard was conducted. Therefore, it cannot be said that the petitioner has abandoned the job on his own.

27. The next question which arises for determiantion that whether the termination of the services of the petitioner *w.e.f.* 07-04-2017, is voilative of the provisions of the Act. It is an admitted fact taht the petitioner had remained in the services of the respodnent *w.e.f.* 2015 till 4-7-2017 and had completed 240 working days with the respodnent prior to the date of his termination. It is also admitted position on record that before terminataing the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*

(2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified. Resultantly, the award dated 13-8-2019, passed by the Arbitrator, is hereby set aside and quashed.

31. For the foregoing reasons, I have no hesitation in coming to the conclusion that the termination of the services of the petitioner by the respondent School *w.e.f.* 07-04-2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified, hence, the petitioner is held entitled for re-instatement in service on the same post and place with seniority and continuity but withut back-wages. The issue is decided accordingly.

Relief :

32. As a sequent effect, in the light what has been discussed hereinabove while deciding issue No.1 above, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent school **to re-engage the services of the petitioner on the same post and place from where he was relieved/terminated. The respondent school is also directed to grant seniority and continuity to the petitioner but without any back-wages.** The reference is answered in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number	:	128 of 2017
Instituted on	:	04-08-2017

Decided on : 01-08-2022

Vikas Thakur s/o Shri Vidya Sagar r/o VPO Cholthra, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

The Factory Manager M/s Autocop (India) Pvt. Ltd., 22 EPIP, Phase-II, Village Thana Baddi, Tehsil Nalagarh, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act

For the Petitione : Shri Rahul Chandel, Adv.

For the Respondent : Shri Rajiv Sharma, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 17-07-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

"**Whether termination of services of Shri Vikas Thakur s/o Shri Vidya Sagar, r/o VPO Cholthra, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 08-10-2016 by the Factory Manager M/s Autocop (India) Pvt. Ltd., 22 EPIP, Phase-II, Village Thana Baddi, Tehsil Nalagarh, District Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority and past service benefits and compensation the above workman is entitled to from the above employer/ management?"**

2. To the fore, Shri Vikas Thakur (hereinafter to be referred as the petitioner) has instituted the claim petition against the **Factory Manager M/s Autocop (India) Pvt. Ltd., 22 EPIP, Phase-II, Village Thana Baddi, Tehsil Nalagarh, District Solan, H.P.** (**hereinafter to be referred as respondent**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that he was employed in the respondent company since 01-03-2016. The petitioner has worked with full devotion, honesty and best of his abilities. The respondent has terminated the services of the petitioner on 08-10-2016 in illegal manner. The termination of the services of the petitioner was against the principles of natural justice as no opportunity of being heard was offered to the petitioner at any stage.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"**It is therefore, prayed that this Hon'ble Court may kindly be pleased to pass an order to set aside the termination order dated 8-10-2016 passed by the respondent company being illegal, null and void and is further prayed that the respondent company may be directed to reinstate the services/employment of the applicant/petitioner with all monetary/consequential benefits and compensation for harassing the applicant/ petitioner."**

5. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, gainfully employed, not a legal reference and the petitioner was appointed Assistant in the dispatch department as probationer and his services were terminated during probation period and as per letter of appointment dated 1-3-2016, the services of the petitioner can be terminated during probationary period or extended probationary period without assigning any reason and without notice.

6. On merits, it is submitted that the appointment of the petitioner *w.e.f.* 1-3-2016, was on probation and his services were terminated on 07-10-2016, during the probation period as no confirmation letter as required under law was issued to him. The full & final dues were duly released by the respondent to the petitioner. The petitioner has not completed 240 working days in services of the respondent. The services of the petitioner can be terminated during probation period without assigning any reason. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination *vide* Court order dated 24-10-2019, as under:

1. Whether the termination of the petitioner *w.e.f.* 08.10.2016, is voilative of the provisions of the Industrial Disputes Act, as alleged? If so its effect thereto? . .*OPP.*

2. Whether the statement of claim is not maintainable as the petitioner could not complete his probation successfully, as alleged? If so, its effect thereto? . .*OPR.*

3. Whether the petitioner has concealed true and material facts from this Court, as alleged? If so its effect thereto? . .*OPR.*

4. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes
Issue No. 2	No
Issue No. 3	No
Relief.	Reference is allowed awarding lump sum compensation of ₹ 25,000/- per operative part of award.

Reasons for findings

Issues No.1 & 2 :

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. To substantiate its case, the petitioner namely Shri Vikas Thakur has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition.

14. In cross-examination, he admitted that he was engaged vide appointment letter (R-1), to which he accepted the same by putting his signatures. He further admitted that his services were terminated *vide* letter dated 07-10-2016 (R-2). He admitted that to his demand notice, the company has filed its reply on 26-10-2016 (R-3) and full & final payment of ₹ 4413/- has been paid to him vide settlement (R-4). He admitted to have not completed 240 days.

15. In order to rebut, the respondent company has filed the affidavit of Shri Wasim Salim Shaikh, Production Manager of the respondent company but this witness has not appeared into the witness box despite affording opportunity. The Ld. Counsel for the respondent has stated that the respondent company is no more interested to pursue further with the case, therefore an appropriate orders may kindly be passed, hence, this Court has left with no other alternative but to order the struck down the respondent evidence by the order of the Court, as is evident from order dated 22-07-2022.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Rahul Chandel, Learned counsel for the petitioner has contended with all vehemence that the petitioner is squarely covered under the definition of "*workman" under* the Act and his services have been terminated orally without complying with the provisions of the Act as no notice or compensation was paid to him. It is therefore prayed that the claim filed by the petitioner may kindly be allowed.

18. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent urged that the the present claim petition is not maintainable as the services of the petitioner have been engaged on probation period and since the petitioner has not successfully completed his probation period, hence, his services ere rightly terminated by the respondent. It is therefore prayed that the claim petition may kindly be dismissed.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

The Industrial Disputes Act, 1947, is:

"*An act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes".*

Section 2(s) defines a Workman as:

"*2(s). "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharge or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-*

(*i*) *who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*

(*ii*) *who is employed in the police service or as an officer or other employee of a prison; or*

(*iii*) *who is employed mainly in a managerial or administrative capacity; or*

(*iv*) *who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."*

Section 2(oo) lays down the concept of retrenchment as:

"*Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*

(a) voluntary retirement of the workman;

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

(c) termination of the service of a workman on the ground of continued ill-health"

21. I am unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondents. The question "who is a workman" has been well settled by various judgments of the Hon'ble Supreme Court. In the case of ***H.R. Adyanthaya vs. Sandoz (India) Ltd. (1997) 5 SCC 737,*** a Constitution Bench of the Hon'ble Supreme Court has held as under:

"***..We thus have three Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz, manual, clerical, supervisory or technical and two two-judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge Bench decisions which***

have without referring to the decisions in May & Baker, WIMCO and Bunnah Shell cases (supra) have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have,therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz.,manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."

22. Thus, from the careful reading of aforesaid provisions and scrutinized record, it is crystal clear that the petitioner was engaged as Assistant in dispatch department *w.e.f.* 1-3-2016 on probation by the respondent company at its Baddi Plant. The appointment letter (R-1) has been issued in the name of the petitioner on the following terms and conditions:

"You are appointment as "Assistant" *w.e.f.* 01-03-2016 and your appointment has been made for a period of six months from the date of joining, purely on probation and the probationary period may be extended from time to time at the discretion of the company. If found necessary probationary period may be extended at the discretion of the management or may be dispensed with earlier either during the probation or the extended period of probation. Unless confirmed in writing, you will be deemed as probationer after the expiry of the probationary or the extended period of probation. Your services will therefore be liable to be terminated without notice or specifying any reasons. No notice of termination will be necessary on the expiry of the original or extended probationary period.

Your salary package would be Rs. 10149/- p.m (All inclusive) CTC as per company rules + Rs. 1000/- (performance incentive) as per your job profile in line with company's objective. The breakup of the salary would be decided as per company Rules.

You will not divulge any information, date or documents or secrets of the company that you may come in procession during course of employment with the company to any unauthorized person both in and outside the organization. You will not keep any papers or data of the company separately with you or transfer or loan it on any other paper. The information, data, documents, secrets of the company is a privilege to you during your employment with the company & you are supposed to use the same only for the benefit of the company. If you anyway use or try to use the same otherwise, you would be liable for suitable legal action as deemed fit by the company."

23. Admittedly, the petitioner was engaged *w.e.f.* 1-3-2016 and his appointment has been made for a period of six months from the date of joining, purely on probationary period may be extended from time to time at the discretion of the respondent company. The services of the petitioner were terminated *vide* letter dated 07-10-2016 with the remark that initial probation period was not found satisfactory, hence, the petitioner cannot continue consult for improving the working style. The probationary services are terminated *w.e.f.* 07-10-2016. The petitioner was engaged on 01-03-2016, though, the probationary period of six months which was subsequently completed on 31-8-2016, however, no letter regarding extension of period of probation or confirmation has been issued from the side of the respondent company. Meaning thereby the petitioner has successfully completed his probation period of six months expire on 31-8-2016, whereas his services have been terminated *w.e.f.* 07-10-2016. It is nowhere the case of the respondent that the services of the petitioner have been further extended. The respondent has miserably failed to prove on record the

letter of extended period of probation, therefore, in the absence of any cogent, clear and clinching documentary proof, this Court could legitimately concludes that the petitioner had successfully completed his period of probation. This apart the petitioner has worked continuously with the respondent company *w.e.f.* 1-3-2016 to 7-10-2016, the date on which the services of the petitioner were terminated on the ground that the petitioner has not completed the period of probation. At the cost of repetition, the letter dated 7-10-2016, issued after the expiry of probationary period review the probationary period of the petitioner rendered in the company from 1-3-2016 to 31-8-2016. More so, *vide* termination letter dated 7-10-2016, the services of the petitioner were terminated on the ground that the petitioner has failed to render satisfactory service during the initial period of probation which was not found satisfactory. It is averred in the letter dated 7-10-2016, despite counseling, the petitioner failed to improve his working style upto the mark. However, there is no documentary proof to substantiate the plea raised from the side of the respondent. Moreover, the respondent has failed to lead any oral and documentary evidence to substantiate their plea except by tendering the sworn in affidavit of Shri Wasim Salim Shaikh, who has not been produced for the purpose of conducting the cross-examination. Mere examination in chief in the absence of cross-examination cannot be read into evidence. It is well settled that in the absence of pleadings, evidence, if any, produced from the side of the parties, cannot be considered. Similarly, it is equally settled that no party could be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the party in support of the case set out by it. Mainly, the object and purpose of pleadings is to enable the adversary party to know the case it has to meet.

24. Verily, the entire evidence led from the side of the petitioner had gone unrebutted and unchallenged on record. No second opinion can be formed therein. The respondent has failed to discharge its onus. Rather, the petitioner has succeeded in proving that he has successfully completed the probation period of six months which was not extended or confirmed by any of the letter issued on 31-8-2016 or 1-9-2016 or thereafter.

25. Now, the question is as to what relief, the workman is entitled to? In an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. *vs.* The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate *Vs.* The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

26. Similarly, in another authority reported as **Nehru Yuva Kendra Sangathan *Vs.* Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under :

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

27. Considering the facts of this case, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

28. Similarly, in another authority reported as **M.L. Binjolkar *Vs.* State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. *Vs.* Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya *Vs.* State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. *Vs.* Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank *Vs.* Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore *Vs.* S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan *Vs.* Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

29. Similarly, in another authority reported as **U.P. State Brassware Corporation Limited and another *Vs.* Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "**A Division Bench of this Court in M.L. Binjolkar *v.* State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under**:
>
> **"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the**

31. Considering the fact that the petitioner was a probationar, I deem it proper that reinstatement would not be proper and instead compensation would be a better alternative. Considering the fact on the file, I deem it proper that compensation of Rs. 25,000/- would be appropriate and would meet the ends of justice. I, accordingly, grant compensation of Rs. 25,000/ (Rupees Twenty Five Thousand only) to the workman, to be paid by the respondent management within one month fromt the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respodnent management to the workman. This issue is accordingly, decided in favour of the petitioner and against the respodnent.

Issue No. 3 :

32. In support of this issue no evidence has been led by the respondent which could go to show as to what true facts have been concealred by the petitoner from this Court. In the absence of any evidence led from the side of the respodnent company in support of this issue, the same is decided in favour of the petitioner and against the respondent.

Relief :

33. As a sequent effect, in the light what has been discussed hereinabove while deciding issues No.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay awarded lump sum compensation of **Rs. 25,000/- (Rupees Twenty Five Thousand only) to the workman**, within one month from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the

workman/petitioner. The reference is answered in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 181 of 2020

Instituted on : 24-08-2020

Decided on : 01-08-2022.

Rama Kant s/o Shri Megh Shyam, r/o VPO Kurali, Tehsil Naraingarh, District Ambala, Haryana. . .*Petitioner.*

Versus

The Managing Director M/s Sai Tech. Medicare Pvt. Ltd., Village Khen, Trilokpur Road, Kala Amb, District Sirmaur, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act

For the Petitioner : Shri Hitender Thakur, Adv.

For the Respondent : Shri Sahil Thakur, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 17-08-2020, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

"**Whether termination of services of Shri Rama Kant s/o Shri Megh Shyam, r/o VPO Kurali, Tehsil Naraingarh, District Ambala, Haryana *w.e.f.* 14-09-2019 by the Managing Director M/s Sai Tech. Medicare Pvt. Ltd., Village Khen, Trilokpur Road, Kala Amb, District Sirmaur, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above management?"**

2. To the fore, Shri Rama Kant (hereinafter to be referred as the petitioner) has instituted the claim petition against the **Managing Director M/s Sai Tech. Medicare Pvt. Ltd., (hereinafter to be referred as respondent**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that he was working on the post of Assistant Accounts Manager since 01-07-2011 with the respondent and worked as such till 13-09-2019, when the services of the petitioner were terminated orally. The petitioner was promoted as Accounts Officer on 15-03-2018 raising his pay from ₹ 19,000/- to ₹ 26,000/-. The respondent paid a sum of ₹ 50,000/-, in cash, in the month of July, 2018 and a sum of ₹ 34,000/-, in cash, in the month of March, 2019. The petitioner had approached the respondent to reengage him, however, the respondent did not paid any heed to the request of the petitioner. The services of the petitioner were illegally terminated in contravention of the provisions of sections 25-F, 25-G and 25-H of the Act and H.P. Industrial Employment (Standing Orders) Rules, 1973. The services of the petitioner have been dismissed by way of victimization and not in good faith but in the colorable exercise of the employer's right. The petitioner is un-employed since the date of his illegal termination.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**It is therefore most respectfully prayed that the termination of services of the petitioner w.e.f. 14.09.2019 by the respondent company without complying with the provisions of the Act be held null and void and following relief(s) may kindly be granted to the petitioner.**
>
> **(A) The petitioner be directed to be reinstated in service with all the consequential benefits including full back wages with 18% interest.**
>
> **(B) In alternative, the respondent be directed to pay total compensation of ₹ 4,74,692/- which includes ₹ 3,74,692 towards legally admissible dues and ₹ 1,00,000/- towards compensation for harassment."**

5. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability and the petitioner is not a "workman".

6. On merits, it is submitted that the petitioner was working as Assistant Accounts Manager with the respondent company in the capacity of managerial post and he do not fall within the definition of "workman". It is denied that the services of the petitioner were terminated orally. It is submitted that the petitioner had left the service for greener pastures wilfully. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 20-11-2021, as under:

1. Whether the termination of the services of the petitioner *w.e.f.* 14-09-2019, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue No.1 is proved in affirmative, then what sort of relief the petitioner is entitled? . .*OPP.*

3. Whether the claim is not maintainable in the present form as alleged? . .*OPR.*

4. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes
Issue No. 2	Entitled to lump sum compensation of ₹ 80,000/- (Eighty Thousand).
Issue No. 3	No
Relief.	Reference is partly allowed awarding lump sum compensation of ₹ 80,000/- (Eighty Thousand) as per operative part of award.

Reasons for findings

Issues No. 1 & 2 :

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. To substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence copy of promotion letter dated 15-3-2018 (PW-1/B), letter dated 16-9-2019 (PW-1/C) and OPD slip (PW-1/D).

14. In cross-examination, he admitted that he was engaged as Assistant Account Manager in the year 2011 and presently he is working with Digital Vision Kala Amb since August 2020. He further admitted that full and final amount of ₹ 55,696/- has been paid to him. He denied that he had left the job out of his will.

15. In order to rebut, Shri Kuldeep Singh, Sr. Executive Accountant had appeared into the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of resolution dated 1-3-2022 (RW-1/B), copy of full and final settlement Mark RA, no dues certificate Mark RB, statement of account Mark RC and copy of Cheque Mark RD.

16. During cross-examination, he admitted that the petitioner worked as an Accountant since 1-7-2011 and he was promoted as Accounts Officer in 2018. He further admitted that the petitioner used to collect the payments on behalf of the company and maintained the record in this regard. He also denied that the petitioner had gone to Panchkula for medicine of his child after

sanction of leave. He denied that the petitioner was not allowed to join the duty on 14-9-2019. He admitted that no show cause notice or absentee letter was issued by the company.

17. In documentary proof, the petitioner has relied upon promotion letter (PW-1/B), letter dated 16-9-2019 (PW-1/C) and OPD slip (PW-1/D). On the other hand, the respondent had relied upon resolution dated 1-3-2022 (RW-1/B), copy of full and final settlement Mark Ra, no dues certificate Mark RB, statement of account Mark RC and copy of cheque Mark RD.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri Hitender Thakur, Learned counsel for the petitioner has contended with all vehemence that the petitioner is a workman as defined under section 2(s) of the Act as he was performing his duties manually. He further argued that it is nature of work which is required to be considered and the designation of the employee or the name assigned to him should not be given undue importance. The services of the petitioner have been terminated orally without complying with the provisions of the Act as no notice or compensation was paid to him. It is therefore prayed that the claim filed by the petitioner may kindly be allowed.

20. *Per contra*, Shri Sahil Thakur, Ld. Counsel for the respondent urged that the petitioner is not a workman and as such the present claim petition is not maintainable. The petitioner was working in managerial capacity as Accountant and he was promoted as Accounts Officer. The petitioner has received his full & final settlement amount. The present claim petition is false one as there is no termination, rather the petitioner had left/abandoned the job himself for greener pasture in life and he is gainfully employed. It is therefore prayed that the claim petition may kindly be dismissed.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Before, I proceed further, it is pertinent to mention that "workman" has been defined under clause s of Section 2 of the Act, which reads as under:

> **"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, dischasrge or retrenchment has led to that dispute, but does not include any such person—**
>
> (*i*) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
>
> (*ii*) who is employed in the police service or as an officer or other employee of a prison; or
>
> (*iii*) who is employed mainly in a managerial or administrative capacity; or

(*iv*) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

23. Admittedly, it is well recognized principle of law that in determining the question whether a person employed by the employer comes within the definition of "workman" under section 2(s) of the Act or not, the Court has principally to see main or substantial work for which the employee has been engaged to do the said work. It is settled that if the main work is of clerical nature, the more fact that some supervisory duties are also carried out, incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity. This law has been laid down by the Hon'ble Apex Court in case titled as **Ananda Bazar Patrika (P) Ltd. *vs* The Workmen, (1970) 3 SCC 248.**

24. It is also held by the Hon'ble Apex Court in case titled as **Anand Regional Coop. Oil Seeds Growers Union Ltd *Vs.* Shailesh Kumar Harshad Bhai Shah (2006) 6 SCC 548 that** while determining the nature of work performed by the employee, essence of the matter should be considered and the designation of the employee or the name assigned to his class, should not be given undue importance. Similar is the law laid down by the Hon'ble Supreme Court in case titled as **S.K Verma Vs. Mahesh Chandra and Another (1983) 4 SCC 214**, wherein it is observed that designation or name of post not decisive.

25. In an another case titled as **S.K Mani *Vs.* M/s Carona Sahu Company Ltd. and Ors., (1994) 3 SCC 510**, the Hon'ble Apex Court has held that for determination "Workman", employee doing more than one duties and functions, nature of duties, not designation is important.

26. In the instant case, the respondent witness (RW-1) has categorically admitted that the services of the petitioner were engaged by the respondent company as an Accountant since 1-7-2011. He was promoted as an Accounts Officer. He further admitted that the petitioner used to collect payments on behalf of the company and maintained the record in this regard. There was no complaint from any quarter regarding the work of the petitioner. The witness (RW-1) has also admitted that no show cause notice or absentee letter was issued to the petitioner. The petitioner was subscriber of ESI and EPF. He denied that the signatures of the petitioner were obtained by force on full & final payment and no dues certificate was issued. The respondent witness (RW-1) has nowhere stated that the petitioner was engaged in supervisory, managerial or administrative capacity. The essence of the work attached to the petitioner was to collect the payments and maintaining the record. It is a manual or clerical job. Simply on this score that the petitioner was designated as an Assistants Accountant and later on he was promoted as an Accounts Officer does, not come in any way to defeat the true import and meaning of the definition of the "workman" as provided under section 2(s) of the Act. This Court/Tribunal hereby legitimately conclude that the nature of job assigned to the petitioner render him within the four corner of definition of "workman" as defined under section 2(s) of the Act.

27. The next contention raised on behalf of the respondent is that the petitioner has abandoned the job on his own and his services were never terminated by the respondent company. Our own Hon'ble High Court in case titled as State of Himachal Pradesh through Secretary Forests to the Government of Himachal Pradesh and Another *Vs.* Achhar Singh, CWP No. 2815 of 2016 decided on 04-03-2022 has observed that the plea of abandonment cannot be taken in the air, rather cogent an convincing evidence is required to be led to prove this fact. In this case the respondent has miserably failed to place on record any notice issued to the petitioner calling upon him to resume his duties nor any enquiry in this regard was conducted. Therefore, it cannot be said that the petitioner has abandoned the job on his own.

28. The next question which arises for determination that whether the termination of the services of the petitioner *w.e.f.* 14-9-2019, is violative of the provisions of the Act. It is an admitted fact that the petitioner had completed 240 working days with the respodnent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**

(*a*) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(*b*) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(*c*) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

29. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

30. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

31. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

32. Now, the question arises as to what relief, the workman is entitled to? The petitioner in his cross-examiantion has admitted that presently he is workin with Digital Vision since 2020, hence, it cannot be said that the petitioner is not gainfully employed. Moreover, the petitioner in his claim petition has prayed for alternative relief of compensation. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termiantion. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. *vs.* The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate *Vs.* The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

33. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan *Vs.* Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

34. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

35. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar *Vs.* State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in**

various cases e.g. Hindustan Motors Ltd. *Vs.* Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya *Vs.* State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. *Vs.* Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank *Vs.* Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore *Vs.* S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan *Vs.* Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

36. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another *Vs.* Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in M.L. Binjolkar *v.* State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

37. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

38. In the instant case, the petitioner was enaged by respodnent company as Assistant Accountant and thereafter he was promoted as Accounts Officer. It is also admitted position on record that the petitioner had worked with the respodnent company w.e.f. 01.07.2011 till 13.9.2019. The petitioner had worked with the respdonent company for about eight years.

39. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. *Vs.* Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives *Vs.* General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur *Vs.* Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

40. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculier merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

41. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of **₹ 80,000/- (Eighty Thousand) as lump sum compensation** from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

Issue No.3 :

42. In order to prove this issue, no specific evidence has been led by the respodnent which could go to show that as to how the present petition is not maintainable in the present form especially when the same has been filed pursuant to the reference petition sent by the appropriate government for adjudication. I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

Relief :

43. As a sequent effect, in the light what has been discussed hereinabove while deciding issued No.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent company to pay a sum of **₹ 80,000/- (Eighty Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues *i.e.* gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 47 of 2017

Instituted on : 01-04-2017

Decided on : 01-08-2022

1. Yashwant Singh S/o Sh. Hukam Chand, r/o Village Samouh, P.O. Balag, Tehsil-Sundernagar, Distt. Mandi, H.P. (Code No. 7215).

2. Khem Raj s/o Sh. Thakur Singh, r/o Vill. Basta, P.O. Bagshar, Tehsil Karsog, Distt. Mandi, H.P. (Code No. 72019).

3. Sanjeev Kumar s/o Sh. Subhash Chand, r/o Vill- Kaloor, P.O. Kaloor, Tehsil Nadaun, Distt. Hamirpur, H.P. (Code No. 7213).

4. Duni Chand s/o Sh. Lachho Ram, r/o Vill. Radot, P.O. Masroond, Tehsil & Distt. Chamba, H.P.

5. Vinod Kumar s/o Sh. Sukh Lal, r/o VPO Sanoor Kalan, Tehsil & Distt. Una, H.P. (Code No-7217).

6. Dameshwar s/o Sh. Roshan Lal, r/o Vill. Barnog, P.O. Jungi, Tehsil Sundernagar, Distt. Mandi, H.P. (Code No. 7229).

7. Gopal Kirshan s/o Sh. Nagender Sharma, r/o Vill-Chandru, P.O. Jai Devi Tehsil Sundernagar, Distt. Mandi, H.P. (Code No. 7233).

8. Mohinder Sigh s/o Sh. Suresh Kumar r/o Vill. Matial P.O. Sehor Pain, Tehsil Jawalamukhi, Distt. Kangra, H.P. (Code No. 7243).

9. Narender Kumar s/o Sunil Kumar, r/o Vill. La Devi, Tehsil & Distt. Hamirpur, H.P. (Code No. 7244).

10. Tara Chand s/o Sh. Thakur Ram, r/o Vill. Kanoyala, P.O. Gumaha, Teshil Nalagarh, Distt. Chamba, H.P. (Code No. 7248).

11. Sanjeev Kumar s/o Sh. Madan Lal, r/o Vill. Poolin, P.O. Sirdi, Tehsil Bharmour, Distt. Chamba, H.P.(Code No. 7251).

12. Kaka s/o Sh. Amli Ram, r/o Vill. Jwared, P.O. Siur, Tehsil Bharmour, Distt. Chamba H.P. (Code No. 7251).

13. Purvia Ram s/o S. Rijhu Ram, r/o Vill. Jwared, P.O. Siur, Tehsil Bharmour, Distt. Chamba, H.P. (Code No. 7252).

14. Vinod Kumar s/o Sh. Hans Raj, r/o VPO Jawali, Distt. Kangra, H.P. (Code No. 7274)

15. Deepak Kumar s/o Sh. Ahwsok Kumar, r/o Vill. Dalalar, P.O. Jijwan, Tehsil Jawalamukhi, Dist- Kangra, H.P. (Code No-7275).

16. Ashish Kumar s/o Sh. Vijay Kumar r/o Vill- Matiar, P.O. Sehor Pian Tehsil Jawalamkuhi, Distt. Kangra, H.P. (Code No. 7277).

17. Prithi Singh s/o Sh. Chuni Lal r/o Vill. Dhulas, P.O. Silh , Tehsil Jawalamukhi, Distt. Kangra, H.P. (Code No. 7278).

18. Sandeep Kumar s/o sh. Biyas Kumar r/o Vill. Proh, P.O. Jhanghi, Tehsil & Distt-Chamba, H.P. (Code No. 7275).

19. Pawan Kumar s/o Des Raj, r/o VIll. Tapri, P.O. Goli, Tehsil Dalhousie, Distt. Chamba H.P. (Code No. 7377).

20. Rejinder Kumar s/o Sh. Des Raj, r/o Vill. Lendi Behi P.O. Kohlari, Tehsil & Distt. Chamba, H.P . (Code No. 7379.

21. Parmod Kumar s/o Sh. Chuni Lal, r/o VPO Mail, Tehsil Dalhousie, Distt. Chamba, H.P. (Code No. 7381).

22. Sonu Singh s/o Sh. Devi Singh, r/o VIll. Behi, P.O. Kiri Tehsil & Distt. Chamba, H.P. (Code No.7383).

23. Ravi s/o Sh. Sarvan, r/o Vill. Bangal, P.O. Kiri, Tehsil & Distt. Chamba, H.P. (Code No. 7384).

24. Harinder kumar s/o Sh. Naresh Kumar r/o Vill. Giyanu, P.O. Kiani, Tehsil & Distt. Chamba, H.P. (Code No. 7384).

25. Jagdish Chand s/o Balak Ram r/o Vill. Malag, P.O. Nandpur, Tehsil Nalagarh, Distt. Solan, H.P. (Code No. 7389).

26. Parveen s/o Amro r/o Vill-Potka, P.O. Bathri, Tehsil Dalhousie, Distt. Chamba, H.P. (Code No. 7391).

27. Prem Raj s/o Sh. Badro Singh, r/o Vill. Granger, P.O. Goli, Tehsil Dalhousie Distt. Chamba, H.P. (Code No. 7395.

28. Gaginder Singh s/o Jarmo, r/o Vill. Behi, P.O. Kiri Tehsil & Distt. Chamba, H.P. (Code No. 7396).

29. Balwinder s/o Sh. Gian Singh, r/o Vill. Khal Tibaa, P.O. Saloa, Tehsil Nainadevi ji, Distt- Bilaspur, H.P. (Code No. 7406).

30. Chaman Singh s/o Sh. Amro, r/o Vill. Reya, P.O. Bakani, Tehsil & Distt. Chamba, H.P. (Code No. 7407).

31. Kewal Singh s/o Nanak Chand, r/o Pakla P.O. Bakano, Tehsil & Distt. Chamba, H.P. (Code No. 7408).

32. Dalip Kumar s/o Sh. Jogindre Pal, r/o Vill. Granger, P.O. Goli, Tehsil Dalhouise, Distt. Chamba, H.P. (Code No. 7420).

33. Sarvan Kumar s/o Lachman Dass, r/o vill. Nand Kolka P.O. Latwari, Tehsil Nalagarh, DIstt. Solan, H.P. (Code No. 7421).

34. Sohan lal s/o Sh. Chuhru Ram, r/o VIl. Kothi, P.O. Ratwari, Tehsil. Nalagarh, Distt. Solan, (Code No. 7422).

35. Pardeep Kumar s/o Sh. Jagdish Chand, r/o VIll. Grhi, P.O. Sehorpaim, Tehsil Jawalamukhi, Distt. Kangra, H.P. (Code No. 7425).

36. Ajit Kumar s/o sh. Joginder Kumar, r/o Vill. Dudhla, P.O. Gangalbari, Teshil Sujanpur, Distt. Hamirpur, H.P. (Code No. 7426).

37. Sunil Kumar s/o Sh. Rattan Singh, r/o Vill. Dughi, P.O. Bardhil, Tehsil Ghumarwin, Distt. Bilaspur, H.P. (Code No. 7426).

38. Sanjay Kumar s/o Sh. Nagpal, r/o Awayar, P.O. Harabag, Tehsil Joginder Nagar, Distt. Mandi, H.P. (Code No.7431).

39. Amandeep s/o Sh. Nan Lal, r/o VIll- Kripalpur, P.O. & Tehsil Nalagarh Distt. Solan, H.P. (Code No. 7432).

40. Pappu Ram s/o Sh. SHiv Dass, r/o village Jagli, P.O. Mittian, Tehsil Nalagarh, Distt. Solan, H.P.

41. Dinesh Kumar s/o Sh. Uttamo, r/o Vill. Chalathra, P.O. Mehla, Tehsil & Distt. Chamba, H.P. (Code No. 7440).

42. Parveen s/o Sh. Hans Raj, r/o VPO Bhiunkhari, Tehsil Nalagarh, Distt. Solan, H.P. (Code No. 7440).

43. Ashok Kumar s/o Sh. Govind Ram, r/o Vill. Swana P.O. Nakrana, Tehsil Nainadevi JI, Distt- Bilsapur, H.P. (Code No. 7441).

44. Jitender s/o Sh. Gopal singh, r/o Vill Lachnyn, P.O. Boching, Tehsil Padhar, Distt. Mandi, H.P. (Code No. 7449).

45. Naresh Kumar s/o Sh. Bali Ram r/o Vil. Swana, P.O. Nakrana, Tehsil Nainadevi Ji, Distt. Bilaspur, H.P. (Code No-7474).

46. Shyam Lal s/o sh. Vijay Kumar, r/o Vill. Swana, P.O. Nakrana, Tehsil Nainadevi Ji, DIstt. Bilaspur, H.P. (Code No. 7475).

47. Lakhveer s/o Sh. Baldesv singh, r/o Vill. Chaukaph, P.O. Parojan, Tehsil Bangana, Distt. Una, H.P. (Code No. 7476).

48. Ravinder kumar s/o Sh. Mohan Singh, r/o Vill. Khal, P.O. Saloa, Tehsil Nainadevi Ji, Distt. Bilaspur, H.P. (Code No-7505).

49. Kala Devi s/o Sh. Ram Nath, r/o Vill. Swana, P.O. Nakrana, Tehsl Nainadevi Ji, Distt. Bilaspur, H.P. (Code No. 7508).

50. Umesh Kumar s/o Sh. Arjun Singh, r/o Vill. Dhanour, P.O. Ghared, Tehsil Bharmour, Distt. Chamba, H.P. (Code No. 7369).

51. Satish Kumar s/o Sh. Nand Lal, r/o Vill. Tamroh, P.O. Mattian, Tehsil Nalagarh, Dstt. Solan, H.P. (Code No. 7447).

52. Sunil Dutt, s/o sh. Partap Singh, r/o VPO Jahu, Tehsil Bhoranj, Distt. Hamirpur, H.P. H.P. (Code No. 7518).

53. Dev Raj s/o Sh. Brij Lal, r/o VIll. Porla, P.O. Nand, Tehsil Nalagarh, Distt. Solan, H.P. H.P. (Code No. 7285).

54. Shashi Pal s/o Sh. Gian Chand, r/o Vill. Porla P.O. Nand, Tehsil Nalagarh, Distt. Solan, H.P. (Code No. 7289).

55. Kamal Kishore s/o Sh. Mahinder Pal, r/o VIll. Bhingroth, P.O. Rajpura, Tehsil & Distt. Chamba, H.P. (Code No. 7324).

56. Vijay Kumar s/o Sh. Gurdas Ram, r/o VIll. Manjhiani, P.O. Jasana, Tehsil Bangana, Distt. Una, H.P. (Code No. 7333).

57. Rakesh Kumar s/o Sh. Ram Chand, r/o VIll. Kothi, P.O. Ratwari, Tehsil Nalgarh, Distt. Solan, H.P. (Code No. 7370)

58. Shiv Kumar s/o Sh. Kamal Dev, r/o VIll. Patti, P.O. Manakpur, Tehsil Nangal, Distt. Ropar, PB. (Code No. 7489).

59. Shiv Kumar s/o Sh. Pritam Singh, r/o Vill. Hardoharipur, P.O. Gardley, Tehsil Anandpur Sahib, Distt. Ropar, PB (Code No. 7519).

60. Sohan Lal s/o Sh. Shyam Lal, r/o Vill. Mandyali, P.O. & Tehsil Naina Devi Ji, Distt. Bilaspur, H.P. (Code No. 7535).

61. Ajay Kumar s/o Sh. Ram Krishan, Vill. Khal, P.OP. Solda, Tehsil Naina Devi Ji, Distt. Bilaspur, H.P. (Code No. 7494).

62. Darshan Kumar s/o Sh. Ranjeet Singh, r/o VPO Solca, Tehsil Naina Devi Ji, Distt. Bilaspur, H.P. (Code No. 7501.

63. Nand Lal s/o Sh. Lachman Dass, r/o VIll. Darot, P.O. Lakhnoo, Tehsil Naina Devi Ji, Distt. Bilaspur, H.P. (7499).

64. Ravi Kumar s/o Sh. Presm Singh, r/o Village Khalltibba, P.O. Solda, Tehsil Naina Devi Ji, Distt. Bilaspur, H.P. (Code No. 7300).

65. Raj Kumar s/o Sh. Karnail Singh, r/o Vill. Bellikohal, P.O. Manpura, Tehsil Baddi, Distt. Solan, H.P. (Code No. 7572) . .*Petitioners.*

Versus

1. The Managing Director Mondelez India Foods Pvt. Ltd., Unit-1 (formerly Cadbury India Ltd. Unit-II) Registered office Unit- 2001, 20th Floor, tower 3 (Wing C) Indiabulls Finance Centre Parel, Mumbai 400013, India.

2. The Factory Manager Mondelez India Foods Pvt. Ltd., Unit-1 (formerly Cadbury India Ltd.) hadbast No. 199, Village Sandholi, PO. and Tehsil Baddi, District Solan, H.P. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioners : Shri Vikas Rajput, Advocate

For the Respondent : Shri Rajiv Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 23-03-2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

"**Whether the demands raised by Shri Yashwant Singh s/o Shri Hukam Chand and 70 (seventy other) workers (list enclosed) r/o Village Samol, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. before (i) The Managing Director, Modelez Foods Ltd.**

(Formerly, Cadbury India Ltd.) Registered office Unit-2001, 20th Floor, tower-3 (Wing-C), Indiabulls Finance Centre Parel, Mumbai, 400013 India (ii) The Factory Manager, Modelez Foods Ltd. (Formerly, Cadbury India Ltd.) Hadbast No. 199, Village Sandholi, P.O. & Tehsil Baddi, District Solan, H.P. *vide* demand notice dated 04-10-2016 (copy enclosed) regarding verbal termination of services, without complying with the provisions of the Industrial Disputes Act, 1947, whereas persons junior have been engaged/retained, without following the principal of "last come first go" is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation, the above aggrieved workman Shri Yashwant Singh s/o Shri Hukam Chand and 70 (seventy other) workers (list enclosed) are entitled to from the above employers, as per demand notice dated 04-10-2016?"

2. To the fore, Shri Yashwant Singh and 64 (sixty four) workers (**hereinafter to be referred as the petitioners**) have instituted the claim petition against the Managing Director, Modelez Foods Ltd. (Formerly, Cadbury India Ltd.) Registered office Unit-2001, 20th Floor, tower-3 (Wing-C), Indiabulls Finance Centre Parel, Mumbai, 400013 India and the Factory Manager, Modelez Foods Ltd. (Formerly, Cadbury India Ltd.) Hadbast No. 199, Village Sandholi, P.O. & Tehsil Baddi, District Solan, H.P. (**hereinafter to be referred as respondents company)** under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition as alleged by the petitioners in the statement of claim are thus that the petitioners were appointed as worker on fixed term employment/contract basis with the respondents at Baddi. The petitioners have completed 240 days in each and every calendar year. The respondents are going to dispense with the services of the petitioners without following the procedure laid down under sections 25-F, 25-G and 25-H of the Act. The action on the part of the respondents is apparently bad in the eyes of law as many juniors and fresh persons have been retained and re-engaged, which resulted in the miscarriage of justice to the petitioners. The junior persons to the petitioners are getting more salary from the petitioners, whereas the work and duties are same.

4. The following prayer clause, has been appended, in the footnote of the claim petition.

"It is therefore, most respectfully prayed that this claim petition filed by the claimants/petitioners may very kindly be allowed and the claimants those who were already terminated may kindly be ordered to be reinstated/re-engaged with all consequential benefits including seniority from the initial date of appointment, continuity in service from the initial date of appointment and back-wages from the date of illegal termination till the date of actual payment along-with interest @ 9% per annum in the ends of law and justice. While other workman those who are still working may be given protection and their service may not be terminated, further name of all claimants be put on the company roll as they are continuing serving with honesty and diligently. Apart from above, respondent may kindly be directed not to give fictional breaks to the petitioners/ claimants in future. Any other order, as this Ld. Court may deem fit in the facts and circumstances of the case may kindly be passed in favour of the claimants and against the respondents in the ends of law and justice"

5. The lis was resisted and contested by the respondent filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, the reference is not a legal reference, the petition is against the facts, law and procedure and the petitioners have been retained/engaged purely on contractual basis.

6. On merits, it is submitted that the petitioner were engaged by the respondent management on fixed term employment, as per the certified standing orders as applicable to the respondent company and at the time of their engagement, they were clearly clarified with the fact that their services are purely on the basis of fixed term employment and shall come to an end on the expiry of fixed term employment . The petitioners were also apprised to the fact that their services can be again extended for a specific period by the respondent management if the same are again required. Since, the services of the petitioner were purely on fixed term employment basis, hence, the question of completion of 240 days does not arise at all. The services of the petitioners were stand terminated on 31-03-2017, as per the terms of appointment letter. The provisions of sections 25-F, 25-G and 25-H are not applicable in the present case. It is, therefore, most respectfully prayed that the claim petition filed by the petitioners/workmen, against the respondent, may kindly be dismissed in the interest of justice.

7. While filing rejoinder, the petitioners controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination *vide* Court order dated 12-12-2018:

1. Whether the termination of services of the petitioners is illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative to what relief of service benefits the petitioners are entitled to? . .*OPP.*

3. Whether the petition is not maintainable as alleged? . .*OPR.*

4. Whether the petitioners were working on fixed term employment basis as alleged? . .*OPR.*

5. Relief.

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1	: Yes
Issue No. 2	: The petitioners, who have filed the present petition are entitled to lump-sum compensation of ₹1,20,000/- (One Lac and Twenty Thousand only) each.
Issue No. 3	: No.
Issue No. 4	: Yes.
Relief	: Petition is partly allowed awarding lump sum

compensation of ₹1,20,000/- (One Lac and Twenty Thousand only) per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 & 4:

12. All these issues are intermingled and inter connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

13. **Shri Vikas Rajput**, Learned Counsel for petitioner has contended with all vehemence that the petitioner, who had been engaged on fixed term employment as a helper/workmen by the respondents and had worked continuously *w.e.f.* **23-10-2010** till **19-11-2012**, on which date his services were terminated without following the mandatory provisions of the Act. So, he is entitled to be reinstated in service by the respondents on the same post and with all service benefits including full back wages.

14. *Per contra, Shri Rajeev Sharma* Learned Counsel for the respondent has strenuously argued that that as the petitioner was an employee on fixed term employment as per the model standing order, and not a permanent employee so there is no relationship of employee and employer between them.

15. It was again contended by learned counsel for the respondent that the services of the petitioners had been hired on a fixed term employment of contract and the respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term employment appointment letter issued to him. He has prayed for the dismissal of the claim petition.

16. Shri **Hem Raj** (one of the petitioner) stepped into the witness box as (PW-1) in order to substantiate its case. In his affidavit (PW1/A) submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on record the authorization *vide* (PW-1/B).

17. In the cross-examination, he categorically stated that he is deposing on behalf of the 45 persons as per the authorization (PW-1/B). The contract of all the 45 persons depicted in (PW-1/B) had expired on 31-03-2017. He denied that full and final payments were made to all the aforesaid persons. He admitted that more than 100 fixed term employment/contract employees were also working in the factory. He admitted that term of other workers has also expired. He denied that they were apprized at the time of joining that the appointment is contractual in nature. He admitted to have issued the appointment letters to all the workers which have been signed by them. He admitted that apart from 45 petitioners the other workers have settled the matter with the respondent company. He admitted that their services came to be an end after the contract had been expired. He denied that the services of all the petitioners were dispensed with legally.

18. Shri Kewal Singh has appeared into the witness box as (PW-2) and tendered in evidence his affidavit (PW-2/A) wherein he reiterated on oath the contents of the petition/statement of claim in its entirety.

19. In cross-examination, he admitted that he had been engaged through a "Rozgar Mela" at Chamba. He denied that the respondent management had told them that they would be recruited for six months and the contract would be renewed subject to availability of work. He admitted that all the workers mentioned in affidavit had been initially issued contractual appointments. He further admitted that all the dues payable have already stand paid.

20. Conversely, respondent examined Shri Nika Ram, Senior Assistant from the office of Labour Commissioner as (RW-1), who stated that the requisitioned record is not available in the office as the same has been wedded out by the order of the Labour Commissioner, Shimla.

21. Shri Balram Barat, HR Manager of respondent company has also appeared into the witness box as (RW-1), who tendered into evidence his affidavit (RW-1/A), wherein he reiterated on oath the contents of the reply filed by the respondent in its entirety. He also tendered in evidence letters, requisition form, closure report, list of employees Mark RX-1 to Mark RX-33.

22. In the cross-examination, he admitted that the respondent company is in working condition. He further admitted that the petitioners completed 240 days in a calendar year. He denied that the mandatory provisions of sections 25-F and 25-G was not complied.

23. Ms. Vidushi Shukla, Legal Manager of respondent company has appeared into to witness dock as (RW-2) and tendered in evidence her affidavit (RW-2/A), **wherein** she reiterated on oath the contents of the reply filed by the respondent in its entirety. She also tendered in evidence copy of standing orders (RW-2/B), power of attorney (RW-2/C) and resolution (RW-2/D).

24. In cross-examination, she admitted that the notification issued by the Labour Commissioner sending the reference to this Court has not been challenged. She admitted that the company is working. She denied that the mandatory requirements of the Act, were not complied before terminating the services of the petitioners. She admitted that no notice has been issued to the petitioners. She denied that the petitioners were recruited and terminated on pick and choose basis.

25. I have given my best anxious considerable thought to the rival contentions of the parties and also scrutinized the entire case record with minute care, caution and circumspection.

26. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear and established on the record that respondent no.1 had adopted the standing orders under Industrial Employment Standing Orders Act, 1946 in respect to the respondents company i.e Cadbury India Pvt. Ltd. It is categorically mentioned under clause-3 (B-VIII) of the Standing Orders that there shall be a provision for fixed term employment/workman, which is one, who has been engaged on the basis of contract of employment for a fixed period. However, his working hours, wages, allowances and other benefits shall not be less than that of the permanent workman. He shall also be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even though his period of employment does not extend to the qualifying period of employment required in the institute.

27. Admittedly, the petitioner and other workmen those who have been engaged by the respondent company, were appointment, as workers on fixed term employment contract employment, as alleged by the petitioners themselves in para 1 of their claim petition.

28. The sole question, which arises for its first and foremost for consideration, as per the contentions raised at the bar, is whether the demand raised by the petitioner and seventy other workers vide demand notice dated 4.10.2016, regarding verbal termination of their services without complying with the provisions of the Act, whereas persons junior to them have been retained/engaged, without following the principles of last come first go is illegal and unjustified. As a matter of fact, the petitioners had relied upon the provisions of section 2oo(bb) of the Act, alleging thereby that the termination of their services at the end of the said period is in contravention of the Act. Such act on the part of the respondent company without complying with the salient provisions of the Act amounted to “retrenchment” and furthermore, the fixed term employment is allegedly on contract basis as envisaged under section 2oo(bb) of the Act.

29. In the case in hand, it was asserted from the side of the petitioners that they were the employees of the respondent company. The petitioners had completed 240 working days of service within a period of twelve calendar months preceding the date of his termination and in view of the fact that no compensation has been paid as provided under section 25-F of the Act, the termination of services of the petitioners is illegal. It is therefore prayed that the respondent company may kindly be directed for their re-engagement with full back-wages.

30. Here, it would be relevant to reproduce section 2oo(bb) of the Act which reads as under:

"**retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—**

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) [2] termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

31. In the back-drop of the aforesaid events, this Court could legitimately concludes that the word "retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well-settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well-settled that the Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term 'retrenchment' a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term 'retrenchment', and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of 'retrenchment' de hors the reason for termination. To be excepted from within the meaning of 'retrenchment' the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of 'retrenchment'. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-clause (bb) subject to the following conditions being satisfied:—

(*i*) that the workman was employed in a project or scheme of temporary duration;

(*ii*) the employment was on a contract, and not as a daily-wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

(*iii*) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

(*iv*) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

32. This has been reitreated in the law laid down by the Hon'ble Apex Court in case titled as **S.M. Ajkar and Ors. *Vs.* Telecom District Manager, Karnataka (2003) 4 SCC 27**. Similar is the law laid down by the Hon'ble Supreme Court in case titled as **S.M. Nilakar and Ors. *Vs.* Telecom District Manager Karnataka (2003) 4 SCC 27 and Bhuvnesh Kumar Dwivedi *Vs.* Hindalco Industries Ltd., (2014) 11 SCC 437**.

33. Another significant fact of the case which was asserted from the side of the petitioners that they are/were the permanent employees of respondent, however, the respondent company had denied the fact and claimed that the petitioner were not the regular employees of the respondent company but they were engaged on fixed term employment employment. Therefore, in view of the aforesaid binding precedent the onus entirely shifts on the shoulder of the petitioner to prove the employee-employer relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person. However, it is the own pleaded case of respondent that the petitioners were employed by respondent on fixed term employment basis. Shri Harpreet Singh (RW1) has categorically admitted in his cross-examination that the petitioners have employed by them and that an appointment letter was also issued to them. It is also the case of respondent that the services of the petitioners came to an end on the completion of fixed term employment. In his substantive evidence, the petitioner clearly admitted that they were initially appointed/engaged on fixed term employment basis. Shri Om Prakash (RW-2) has also admitted that the petitioners have worked continuously with the company from the time of their employment. In view of the above, it is evident that the petitioners had worked with the respondent company on fixed term employment basis and their services had been terminated on the completion of fixed term employment

34. Moresoover, the Hon'ble Supreme Court in the case of ***Uptron India Ltd Vs Shammi Bhan reported in 1998(6) SCC page 538*** held that an employee can not be thrown of service by simple reason, even though the standing orders provides for the same. The Hon,ble Supreme Court in the case of ***G.M.Tanda Thermal Power Project vs. Jaya Prakash reported in 2008 LLR 30 SC*** held that Reinstatement of Workman is not tenable when they were engaged for a short period. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, both ends of justice would thus be met, in case the petitioners are granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as ***Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177*** and further reiterated lately in ***P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294***.

35. In all fairness, there is absolutely no denial to the fact that the petitioners were engaged and appointed as workers on fixed term employment basis with the respondent, who in order to mitigate the conduct towards the petitioners, has terminated the services of the petitioners on the completion of fixed term employment. Though, the services rendered by the petitioners has been extended further. In any case, the contention raised from the side of the petitioners cannot be accepted for the following reasons:

"**Firstly,**

The petitioners have not produced any material on record before this Court to prove that their initial engagement was to meet all required criteria under Contract Labour (Regulation and Abolition) Act, 1970 to be eligible to employ employees on contractual basis which includes licence number etc.

Secondly,

The petitioners themselves have admitted that they were initially engaged and appointed as workers on fixed term employment and their employment shall cease to exist on the completion of fixed period.

Thirdly,

The petitioners could not produce any material on record before this Court to show that they were not at all engaged or employed for any particular task or particular object on the completion of which their services deemed to have been terminated through non-renewal of their contract of employment.

Lastly,

The respondent has succeeded in proving by leading the material evidence on record before this Court that the services of the petitioners were engaged for a particular task or particular order on the completion of which their services shall deemed to be automatically terminated.

36. The aforesaid circumstances would clearly postulates that the petitioners were employed for a fixed term, which shall come to an end after the expiry of the fixed period employment.

37. So, whilst looking from all possible angles and taking the holistic view of the matter in hand, by considering the peculiar and attendant facts and circumstances of the case and in view of the aforesaid binding precedents of the Hon'ble Supreme Court vis-a-vis the statements of learned counsel for the parties recorded at the time of the addressing argument, whereby Learned Counsel for the petitioner has stressed for the lump sum compensation to the sum of Rupees 1,50,000 (One Lac and Fifty thousand only), whereas the Learned Counsel for the respondent has urged that as per the conversation held with the company officials the company is ready and willing to pay a sum of Rupees 1,00,000 (One Lac only) to each individual workers. The statements of learned counsel for the parties to this effect has been recorded separately and placed on the record. Keeping in view that the present petition was instituted way back in the year 2017 and it took approximately Five years in deciding and disposing off the matter in the year 2022 as well as length of service of the petitioner, prevalent consumer price index coupled with present scenario of the inflation rate, I deem it appropriate to the increase and dearer prices of essential commodities, which is the need of the hour, to both ends of justice would be met. In a case, if a lump sum compensation is awarded to the petitioner, to be quantified and assessed to Rupees **1,20,000 (One Lac and Twenty thousand)**. The said amount has been awarded in liue of full and final settlement amount, to be calculated @ Rs. 75,000/- by the respondent company and @ Rs. 1,00,000/- offered during the course of argument by the respondent company which is assessed and calculated by this Court to be Rs. 1,20,000/-. Consequently, the petitioner is entitled to receive appropriate compensation from respondent. Since the services of the petitioner had been terminated despite the fact that the respondent company is in working condition, therefore, in the attendant facts and

circumstances they are entitled to a lump sum compensation to be quantified and assessed at **₹1,20,000/- (One Lac and Twenty thousand only)**. All the issue is decided accordingly.

Issue No. 3:

38. In order to prove this issue no specific evidence has been led by the respondent which could go to show as to how the present petition is not maintainable especially when the same has been filed by the petitioner pursuant to the reference sent by the appropriate government to this Court for its legal adjudication. I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioners and against the respondents.

Relief :

39. As a sequel, in the light of what has been discussed hereinabove while recording the findings on issues supra, respondent is hereby directed to pay a lump sum compensation of **Rupees 1,20,000 (One Lac and Twenty thousand**) each to the petitioners in lieu of the full & final settlement amount including reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by respondent to the petitioner within three months from the date of receipt of Award, failing which the company shall be liable to pay the penal interest @ 9% per annum on the aforesaid amount from the date of award till the payment of actual realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to behind to bear their own costs respectively. The reference is answered accordingly.

40. Let a copy of this Award be communicated to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number : 85 of 2017

Instituted on : 10-08-2017

Decided on : 01-08-2022

Narender Kumar s/o Shri Kartar Chand, r/o Village and P.O. Zamanabad, Tehsil & District Kangra, H.P.

Versus

The Factory Manager Mondelez India Foods Pvt. Ltd., Unit-1 (formerly Cadbury India Ltd.) Hadbast No. 199, Village Sandholi, P.O. and Tehsil Baddi, District Solan, H.P. through its Managing Director. . .*Respondent.*

Petition under section 2-A of the Industrial Disputes Act, 1947

For the Petitioners : Shri Vikas Rajput, Advocate

For the Respondent : Shri Rajiv Sharma, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**) preferred on behalf of Shri Narender Kumar (**hereinafter to be referred as the petitioner**) against the Factory Manager Mondelez India Foods Pvt. Ltd., Unit-1 (formerly Cadbury India Ltd.) Hadbast No. 199, Village Sandholi, P.O. and Tehsil Baddi, District Solan, H.P. through its Managing Director **(hereinafter to be referred as respondent company)**, for reinstatement of the services of the petitioner with full back-wages, seniority, continuity and all other consequential service benefits throughout and the break period of engagement and disengagement on account of fictional breaks be condoned in continuity of service for all purposes.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that the company dispensed the services of the petitioner orally without following the proper procedure laid down under the Act as neither any notice nor compensation has been paid to him. The denial of the employment to the petitioner and employing the persons who are much junior to him is not illegal but unjustified. The petitioner approached the respondent for time and again but of no avail. The work is available with the respondent but just to accommodate others, his services have been terminated on the ground of short term contract which is not sustainable.

3. The following prayer clause, has been appended, in the footnote of the claim petition.

"It is therefore, most respectfully prayed that in view of the aforesaid submissions made herein above, the Hon'ble Court may very kindly be granted the following relief in favour of the petitioner:

i. That the oral termination of the applicant may kindly be set aside with further directions to the respondent to reinstate the petitioner with full back wages, seniority, in continuity of service with all consequential benefits.

ii. That the respondents may further be directed to regularize the services of the applicant on the basis of policy framed by the State Government and on the basis of his seniority.

iii. That the respondents may kindly be directed to pay 9% interest on back wages and pay Rs. 5000/- as litigation cost as well as counsel fee.

iv. Any other order, as this Ld. Court may deem fit in the facts and circumstances of the case may kindly be passed in favour of the petitioner."

4. The lis was resisted and contested by the respondent filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, the petition is against the facts, law and procedure and the petitioner was retained/engaged purely on contractual basis.

5. On merits, it is submitted that the petitioner was engaged by the respondent management on fixed term employment, as per the certified standing orders as applicable to the respondent company and at the time of his engagement, he was clearly clarified with the fact that his services are purely on the basis of fixed term employment and shall come to an end on the expiry of fixed term employment. The petitioner was also apprised to the fact that his services can be again extended for a specific period by the respondent management, if the same are again required. Since, the services of the petitioner were purely on fixed term employment basis, hence, the question of completion of 240 days does not arise at all. The services of the petitioner were stand terminated, as per the terms of appointment letter. The provisions of sections 25-F, 25-G and 25-H are not applicable in the present case. It is, therefore, most respectfully prayed that the claim petition filed by the petitioner/workman, against the respondent, may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination vide Court order dated 15.06.2018:

1. Whether the termination of services of the petitioner without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue No.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petitioner was engaged by the respondent on fixed term employment basis, as alleged? . .*OPR.*

4. Whether the petition is not maintainable as alleged? . .*OPR.*

5. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Yes
Issue No. 2	:	The petitioner is entitled to lump sum compensation of ₹1,20,000/- (One Lac and Twenty Thousand only).

Issue No. 3	:	Yes
Issue No. 4	:	No
Relief	:	Petition is partly allowed awarding lump sum compensation of ₹1,20,000/- (One Lac and Twenty Thousand only) per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

11. All these issues are intermingled and inter connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. **Shri Vikas Rajput**, Learned Counsel for petitioner has contended with all vehemence that the petitioner, who had been engaged on fixed term employment as a helper/workmen by the respondents and had worked continuously *w.e.f.* **05-09-2013** till **04-09-2016**, on which date his services were terminated without following the mandatory provisions of the Act. So, he is entitled to be reinstated in service by the respondent on the same post and with all service benefits including full back wages.

13. *Per contra, Shri Rajeev Sharma* Learned Counsel for the respondent has strenuously argued that as the petitioner was an employee on fixed term employment as per the model standing order, and not a permanent employee so there is no relationship of employee and employer between them.

14. It was again contended by learned counsel for the respondent that the services of the petitioner had been hired on a fixed term employment of contract and the respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term employment appointment letter issued to him. He has prayed for the dismissal of the claim petition.

15. Shri **Narender Kumar**, petitioner has stepped into the witness box as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on record the copy of demand notice (PW-1/B) and statement Mark X.

16. In the cross-examination, admitted that initially he was engaged for fixed term by the respondent vide letter (R-1). He admitted to have signed the extension letter dated 28-02-2015 (R-2) and salary revision letter (R-3). He admitted that when the contract came to end his service was automatically terminated. He denied to have received the full & final from the company.

17. Conversely, respondent examined Four RWs in all. Shri Himanshu Chitkara, Employee Relations Manager as (RW-1), who tendered in evidence his affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of standing orders (RW-1/B) and the statement of full and final paid to the petitioner (RW-1/C). In cross-examination he admitted that the petitioner was initially engaged on 05-09-2013 and he continued as such till 04-09-2016. He admitted that no termination letter was issued to the petitioner. He denied that juniors to the petitioner are still working. He admitted that the company is still working and the work is available in the factory. He admitted that the petitioner had completed 240 days in each calendar year from the year 2013 to 2017. He denied that the respondent had defeated the provisions of the Act.

18. (RW-2) Shri Nikka Ram, Senior Assistant from the office of Labour Commissioner has stated that the requisitioned record is not available in the office as the same has been wedded out by the order of the Labour Commissioner, Shimla.

19. Shri Balram Barat, HR Manager of respondent company has also appeared into the witness box as (RW-2), who tendered into evidence his affidavit (RW-2/A), wherein he reiterated on oath the contents of the reply filed by the respondent in its entirety. He also tendered in evidence letters, requisition form, closure report, list of employees Mark RX-1 to Mark RX-10.

20. In the cross-examination, he admitted that the respondent company is in working condition. He further admitted that the petitioners completed 240 days in a calendar year. He denied that the mandatory provisions of sections 25-F and 25-G was not complied.

21. Shri Om Prakash, Manager of respondent company stepped into the witness dock as (RW-3) and tendered into evidence his affidavit (RW-3/A), wherein he reiterated on oath the contents of the reply filed by the respondent in its entirety. He also tendered in evidence documents (RW-3/B-1) to (RW-3/B-34) and employment on fixed term basis of the petitioner (RW-3/C-1) to (RW-3/C-41).

22. In cross-examination, he admitted that the petitioner had worked continuously with the company from the date of his employment. He further admitted that the petitioner had completed 240 working days in a calendar year. He denied that the mandatory provisions of the Act were not complied.

23. I have given my best anxious considerable thought to the rival contentions of the parties and also scrutinized the entire case record with minute care, caution and circumspection.

24. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear and established on the record that the petitioner was engaged by the respondent company on fixed term employment basis and under no circumstance will confer the petitioner any right to a permanent post, except as otherwise expressly set forth in the contract which shall came into force from 15-04-2013 and would remain in force till 15-09-2013 when the same stand automatically terminated at the end of the period of six months. It is quite evident from the appointment letter (R-1). The respondent had adopted the standing orders under Industrial Employment Standing Orders Act, 1946, in respect to the respondent company *i.e.* Cadbury India Pvt. Ltd. It is categorically mentioned under clause-3 (B-VIII) of the Standing Orders that there shall be a provision for fixed term employment/workman, which is one, who has been engaged on the basis of contract of employment for a fixed period. However, his working hours, wages, allowances and other benefits shall not be less than that of the permanent workman. He shall also be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even though his period of employment does not extend to the qualifying period of employment required in the institute.

25. Admittedly, there is no denying fact that the services of the petitioner are purely on temporary in nature on the fixed term employment and the same shall came to an end on the expiry of the fixed term as per letter of appointment/engagement issued under the Model Standing Orders, as applicable to the respondent company. There is again no denying fact that the petitioner was apprised of the fact that his services can be extended for a specific period, if the same are required by the respondent company. The services of the petitioner, therefore, were purely contractual in nature. The petitioner was engaged for a particular period and on the completion of the same, his services will be automatically terminated. The appointment letter was not only duly signed by the petitioner but he also opted to join the respondent company after appended his signatures thereby exposed his consent in writing on the said letter of engagement/appointment.

26. The sole question, which arises for its first and foremost for consideration, as per the contentions raised at the bar, is whether the verbal termination of his services without complying with the provisions of the Act, whereas persons junior to him have been retained/engaged, without following the principles of last come first go is illegal and unjustified. As a matter of fact, the petitioner had relied upon the provisions of section 2oo(bb) of the Act, alleging thereby that the termination of his services at the end of the said period is in contravention of the Act. Such act on the part of the respondent company without complying with the salient provisions of the Act amounted to "retrenchment" and furthermore, the fixed term employment is allegedly on contract basis as envisaged under section 2oo(bb) of the Act.

27. In the case in hand, it was asserted from the side of the petitioner that he was the employees of the respondent company. The petitioner had completed 240 working days of service within a period of twelve calendar months preceding the date of his termination and in view of the fact that no compensation has been paid as provided under section 25-F of the Act, the termination of services of the petitioners is illegal. It is therefore prayed that the respondent company may kindly be directed for his re-engagement with full back-wages.

28. Here, it would be relevant to reproduce section 2oo(bb) of the Act which reads as under:

> "**retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—**
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> (a) voluntary retirement of the workman; or
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> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
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29. In the back-drop of the aforesaid events, this Court could legitimately concludes that the word "retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well-settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well-settled that the Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term 'retrenchment' a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term 'retrenchment', and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of 'retrenchment' de hors the reason for termination. To be excepted from within the meaning of 'retrenchment' the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of 'retrenchment'. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:—

(*i*) that the workman was employed in a project or scheme of temporary duration;

(*ii*) the employment was on a contract, and not as a daily-wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

(*iii*) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

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30. This has been reitreated in the law laid down by the Hon'ble Apex Court in case titled as **S.M Ajkar and Ors. *Vs.* Telecom District Manager, Karnataka (2003) 4 SCC 27**. Similar is the law laid down by the Hon'ble Supreme Court in case titled as **S.M Nilakar and Ors. *Vs.* Telecom District Manager Karnataka (2003) 4 SCC 27 and Bhuvnesh Kumar Dwivedi *Vs.* Hindalco Industries Ltd., (2014) 11 SCC 437**.

31. Another significant fact of the case which was asserted from the side of the petitioner that he is/was the permanent employees of respondent, however, the respondent company had denied the fact and claimed that the petitioner was not the regular employee of the respondent company but he was engaged on fixed term employment. Therefore, in view of the aforesaid binding precedent the onus entirely shifts on the shoulder of the petitioner to prove the employee-employer relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd.* vs. *State of Tamil Nadu, (2004) 3 SCC 514,*** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person. However, it is the own pleaded case of respondent that the petitioners were employed by respondent on fixed term employment basis. Shri Himanshu Chitkara (RW1) has categorically admitted in his cross-examination that no termination letter was issued to the petitioner. He admitted that the company is still working and work is still available. In his substantive evidence, the petitioner clearly admitted to have signed the extension letter dated 28.02.2015 (R-2). He also admitted that when the contract came to end his services were automatically terminated. In view of the above, it is evident that the petitioner had worked with the respondent company on fixed term employment basis and his services had been terminated on the completion of fixed term employment.

32. Moresoover, the Hon'ble Supreme Court in the case of ***Uptron India Ltd Vs Shammi Bhan reported in 1998(6) SCC page 538*** held that an employee can not be thrown of service by simple reason, even though the standing orders provides for the same. The Hon'ble Supreme Court in the case of ***G.M.Tanda Thermal Power Project vs. Jaya Prakash reported in 2008 LLR 30 SC*** held that Reinstatement of Workman is not tenable when they were engaged for a short period. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, both ends of justice would thus be met, in case the petitioners are granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as ***Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177*** and further reiterated lately in ***P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294***.

33. In all fairness, there is absolutely no denial to the fact that the petitioner was engaged and appointed as workers on fixed term employment basis with the respondent, who in order to mitigate the conduct towards the petitioner, has terminated the services of the petitioner on the completion of fixed term employment. Though, the services rendered by the petitioner has been extended further. In any case, the contention raised from the side of the petitioner cannot be accepted for the following reasons:

"**Firstly,**

The petitioner has not produced any material on record before this Court to prove that their initial engagement was to meet all required criteria under Contract Labour (Regulation and Abolition) Act, 1970 to be eligible to employ employees on contractual basis which includes licence number etc.

Secondly,

The petitioner himself has admitted that when the contract came to end his services were automatically terminated.

Thirdly,

The petitioner could not produce any material on record before this Court to show that he was not at all engaged or employed for any particular task or particular object on the completion of which his services deemed to have been terminated through non-renewal of their contract of employment.

Lastly,

The respondent has succeeded in proving by leading the material evidence on record before this Court that the services of the petitioner were engaged for a particular task or particular order on the completion of which their services shall deemed to be automatically terminated.

34. The aforesaid circumstances would clearly postulates that the petitioner was employed for a fixed term, which shall come to an end after the expiry of the fixed period employment.

35. So, whilst looking from all possible angles and taking the holistic view of the matter in hand, by considering the peculiar and attendant facts and circumstances of the case, it could be legitimately summed up that since the petitioner had been opted to be engaged on fixed term basis for a particular period and his services came to an end on the expiry of contractual employment which was extended from time to time, hence, the petitioner by way of nature of employment on fixed term basis cannot claim or press his right of reinstatement or re-engagement as a matter of right. Therefore, in view of the aforesaid binding precedents of the Hon'ble Supreme Court vis-a-vis the statements of learned counsel for the parties recorded at the time of the addressing argument, whereby Learned Counsel for the petitioner has stressed for the lump sum compensation to the sum of Rupees 1,50,000 (One Lac and Fifty thousand only), whereas the Learned Counsel for the respondent has urged that as per the conversation held with the company officials the company is ready and willing to pay a sum of Rupees 1,00,000 (One Lac only) to each individual workers. The statements of learned counsel for the parties to this effect has been recorded separately and placed on the record. Keeping in view that the present petition was instituted way back in the year 2017 and it took approximately Five years in deciding and disposing off the matter in the year 2022 as well as length of service of the petitioner, prevalent consumer price index

coupled with present scenario of the inflation rate, I deem it appropriate to the increase and dearer prices of essential commodities, which is the need of the hour, to both ends of justice would be met. In a case, if a lump sum compensation is awarded to the petitioner, to be quantified and assessed to Rupees **1,20,000 (One Lac and Twenty thousand)**. The said amount has been awarded in lieu of full and final settlement amount, to be calculated @ Rs. 75,000/- by the respondent company and @ Rs. 1,00,000/- offered during the course of argument by the respondent company which is assessed and calculated by this Court to be Rs. 1,20,000/-. Consequently, the petitioner is entitled to receive appropriate compensation from respondent. Since the services of the petitioner had been terminated despite the fact that the respondent company is in working condition, therefore, in the attendant facts and circumstances he is entitled to a lump sum compensation to be quantified and assessed at **₹1,20,000/- (One Lac and Twenty thousand only)**. All the issue is decided accordingly.

Issue No. 4 :

36. In order to prove this issue no specific evidence has been led by the respondent which could go to show as to how the present petition is not maintainable especially when the present petition has been filed by the petitioner after raising the demand notice (PW-1/B) before the Labour-*cum*-Conciliation Officer. I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

37. As a sequel, in the light of what has been discussed hereinabove while recording the findings on issues supra, respondent is hereby directed to pay a lump sum compensation of **Rupees 1,20,000 (One Lac and Twenty thousand**) to the petitioner in lieu of the full & final settlement amount including reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by respondent to the petitioner within three months from the date of receipt of Award, failing which the company shall be liable to pay the penal interest @ 9% per annum on the aforesaid amount from the date of award till the payment of actual realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to behind to bear their own costs respectively. The reference is answered accordingly.

38. Let a copy of this Award be communicated to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number	:	87 of 2017
Instituted on	:	10-08-2017

Decided on : 01-08-2022

Vijay Kumar s/o Shri Jeet Singh, r/o Village Balh (Brofta), P.O. Dogha, Tehsil & District Hamirpur, H.P. . .*Petitioner.*

Versus

The Factory Manager Mondelez India Foods Pvt. Ltd., Unit-1 (formerly Cadbury India Ltd.) Hadbast No. 199, Village Sandholi, P.O. and Tehsil Baddi, District Solan, H.P. through its Managing Director. . .*Respondent.*

Petition under section 2-A of the Industrial Disputes Act, 1947

For the Petitioners : Shri Vikas Rajput, Advocate

For the Respondent : Shri Rajiv Sharma, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**) preferred on behalf of Shri Vijay Kumar (**hereinafter to be referred as the petitioner**) against the Factory Manager Mondelez India Foods Pvt. Ltd., Unit-1 (formerly Cadbury India Ltd.) Hadbast No. 199, Village Sandholi, P.O. and Tehsil Baddi, District Solan, H.P. through its Managing Director **(hereinafter to be referred as respondent company)**, for reinstatement of the services of the petitioner with full back-wages, seniority, continuity and all other consequential service benefits throughout and the break period of engagement and disengagement on account of fictional breaks be condoned in continuity of service for all purposes.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that the company dispensed the services of the petitioner orally without following the proper procedure laid down under the Act as neither any notice nor compensation has been paid to him. The denial of the employment to the petitioner and employing the persons who are much junior to him is not illegal but unjustified. The petitioner approached the respondent for time and again but of no avail. The work is available with the respondent but just to accommodate others, his services have been terminated on the ground of short term contract which is not sustainable.

3. The following prayer clause, has been appended, in the footnote of the claim petition:

"It is therefore, most respectfully prayed that in view of the aforesaid submissions made herein above, the Hon'ble Court may very kindly be granted the following relief in favour of the petitioner:

i. That the oral termination of the applicant may kindly be set aside with further directions to the respondent to reinstate the petitioner with full back wages, seniority, in continuity of service with all consequential benefits.

ii. That the respondents may further be directed to regularize the services of the applicant on the basis of policy framed by the State Government and on the basis of his seniority.

iii. That the respondents may kindly be directed to pay 9% interest on back wages and pay Rs. 5000/- as litigation cost as well as counsel fee.

i*v.* Any other order, as this Ld. Court may deem fit in the facts and circumstances of the case may kindly be passed in favour of the petitioner."

4. The lis was resisted and contested by the respondent filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, the petition is against the facts, law and procedure and the petitioner was retained/engaged purely on contractual basis.

5. On merits, it is submitted that the petitioner was engaged by the respondent management on fixed term employment, as per the certified standing orders as applicable to the respondent company and at the time of his engagement, he was clearly clarified with the fact that his services are purely on the basis of fixed term employment and shall come to an end on the expiry of fixed term employment. The petitioner was also apprised to the fact that his services can be again extended for a specific period by the respondent management, if the same are again required. Since, the services of the petitioner were purely on fixed term employment basis, hence, the question of completion of 240 days does not arise at all. The services of the petitioner were stand terminated, as per the terms of appointment letter. The provisions of sections 25-F, 25-G and 25-H are not applicable in the present case. It is, therefore, most respectfully prayed that the claim petition filed by the petitioner/workman, against the respondent, may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination *vide* Court order dated 15-06-2018:

1. Whether the termination of services of the petitioner without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue No. 1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petitioner was engaged by the respondent on fixed term employment basis, as alleged? . .*OPR.*

4. Whether the petition is not maintainable as alleged? . .*OPR.*

5. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.	:	Yes.
Issue No. 2	:	The petitioner is entitled to lump sum compensation of ₹1,20,000/- (One Lac and Twenty Thousand only).
Issue No. 3	:	Yes.
Issue No. 4	:	No.
Relief	:	Petition is partly allowed awarding lump sum compensation of ₹1,20,000/- (One Lac and Twenty Thousand only) per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

11. All these issues are intermingled and inter connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. **Shri Vikas Rajput**, Learned Counsel for petitioner has contended with all vehemence that the petitioner, who had been engaged on fixed term employment as a helper/workmen by the respondents and had worked continuously *w.e.f.* **05-09-2013** till **04-09-2016**, on which date his services were terminated without following the mandatory provisions of the Act. So, he is entitled to be reinstated in service by the respondent on the same post and with all service benefits including full back wages.

13. *Per contra, Shri Rajeev Sharma* Learned Counsel for the respondent has strenuously argued that as the petitioner was an employee on fixed term employment as per the model standing order, and not a permanent employee so there is no relationship of employee and employer between them.

14. It was again contended by learned counsel for the respondent that the services of the petitioner had been hired on a fixed term employment of contract and the respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term employment appointment letter issued to him. He has prayed for the dismissal of the claim petition.

15. Shri **Vijay Kumar**, petitioner has stepped into the witness box as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on record the copy of demand notice (PW-1/B) and statement Mark X.

16. In the cross-examination, admitted that initially he was engaged for fixed term by the respondent vide letter (R-1). He admitted to have signed the extension letter dated 28-02-2015 (R-2) and salary revision letter (R-3). He admitted that when the contract came to end his service was automatically terminated. He denied to have received the full & final from the company.

17. Conversely, respondent examined Four RWs in all. Shri Himanshu Chitkara, Employee Relations Manager as (RW-1), who tendered in evidence his affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of

standing orders (Rw-1/B) and the statement of full and final paid to the petitioner (RW-1/C). In cross-examination he admitted that the petitioner was initially engaged on 05-09-2013 and he continued as such till 04-09-2016. He admitted that no termination letter was issued to the petitioner. He denied that juniors to the petitioner are still working. He admitted that the company is still working and the work is available in the factory. He admitted that the petitioner had completed 240 days in each calendar year from the year 2013 to 2017. He denied that the respondent had defeated the provisions of the Act.

18. (RW-2) Shri Nikka Ram, Senior Assistant from the office of Labour Commissioner has stated that the requisitioned record is not available in the office as the same has been wedded out by the order of the Labour Commissioner, Shimla.

19. Shri Shri Balram Barat, HR Manager of respondent company has also appeared into the witness box as (RW-2), who tendered into evidence his affidavit (RW-2/A), wherein he reiterated on oath the contents of the reply filed by the respondent in its entirety. He also tendered in evidence letters, requisition form, closure report, list of employees Mark RX-1 to Mark RX-10.

20. In the cross-examination, he admitted that the respondent company is in working condition. He further admitted that the petitioners completed 240 days in a calendar year. He denied that the mandatory provisions of sections 25-F and 25-G was not complied.

21. Shri Om Prakash, Manager of respondent company stepped into the witness dock as (RW-3) and tendered into evidence his affidavit (RW-3/A), wherein he reiterated on oath the contents of the reply filed by the respondent in its entirety. He also tendered in evidence documents (RW-3/B-1) to (RW-3/B-34) and employment on fixed term basis of the petitioner (RW-3/C-1) to (RW-3/C-41).

22. In cross-examination, he admitted that the petitioner had worked continuously with the company from the date of his employment. He further admitted that the petitioner had completed 240 working days in a calendar year. He denied that the mandatory provisions of the Act were not complied.

23. I have given my best anxious considerable thought to the rival contentions of the parties and also scrutinized the entire case record with minute care, caution and circumspection.

24. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear and established on the record that the petitioner was engaged by the respondent company on fixed term employment basis and under no circumstance will confer the petitioner any right to a permanent post, except as otherwise expressly set forth in the contract which shall came into force from 15-04-2013 and would remain in force till 15-09-2013 when the same stand automatically terminated at the end of the period of six months. It is quite evident from the appointment letter (R-1). The respondent had adopted the standing orders under Industrial Employment Standing Orders Act, 1946, in respect to the respondent company i.e Cadbury India Pvt. Ltd. It is categorically mentioned under clause-3 (B-VIII) of the Standing Orders that there shall be a provision for fixed term employment/workman, which is one, who has been engaged on the basis of contract of employment for a fixed period. However, his working hours, wages, allowances and other benefits shall not be less than that of the permanent workman. He shall also be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even though his period of employment does not extend to the qualifying period of employment required in the institute.

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31. Another significant fact of the case which was asserted from the side of the petitioner that he is/was the permanent employees of respondent, however, the respondent company had denied the fact and claimed that the petitioner was not the regular employee of the respondent company but he was engaged on fixed term employment. Therefore, in view of the aforesaid binding precedent the onus entirely shifts on the shoulder of the petitioner to prove the employee-employer relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person. However, it is the own pleaded case of respondent that the petitioners were employed by respondent on fixed term employment basis. Shri Himanshu Chitkara (RW1) has categorically admitted in his cross-examination that no termination letter was issued to the petitioner. He admitted that the company is still working and work is still available. In his substantive evidence, the petitioner clearly admitted to have signed the extension letter dated 28-02-2015 (R-2). He also admitted that when the contract came to end his services were automatically terminated. In view of the above, it is evident that the petitioner had worked with the respondent company on fixed term employment basis and his services had been terminated on the completion of fixed term employment.

32. Moresoover, the Hon'ble Supreme Court in the case of ***Uptron India Ltd Vs Shammi Bhan reported in 1998(6) SCC page 538*** held that an employee can not be thrown of service by

simple reason, even though the standing orders provides for the same. The Hon'ble Supreme Court in the case of ***G.M.Tanda Thermal Power Project vs. Jaya Prakash reported in 2008 LLR 30 SC*** held that Reinstatement of Workman is not tenable when they were engaged for a short period. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, both ends of justice would thus be met, in case the petitioners are granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as ***Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177*** and further reiterated lately in ***P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294***.

33. In all fairness, there is absolutely no denial to the fact that the petitioner was engaged and appointed as workers on fixed term employment basis with the respondent, who in order to mitigate the conduct towards the petitioner, has terminated the services of the petitioner on the completion of fixed term employment. Though, the services rendered by the petitioner has been extended further. In any case, the contention raised from the side of the petitioner cannot be accepted for the following reasons:

"**Firstly,**

> **The petitioner has not produced any material on record before this Court to prove that their initial engagement was to meet all required criteria under Contract Labour (Regulation and Abolition) Act, 1970 to be eligible to employ employees on contractual basis which includes licence number etc.**

Secondly,

> **The petitioner himself has admitted that when the contract came to end his services were automatically terminated.**

Thirdly,

> **The petitioner could not produce any material on record before this Court to show that he was not at all engaged or employed for any particular task or particular object on the completion of which his services deemed to have been terminated through non-renewal of their contract of employment.**

Lastly,

> **The respondent has succeeded in proving by leading the material evidence on record before this Court that the services of the petitioner were engaged for a particular task or particular order on the completion of which their services shall deemed to be automatically terminated.**

34. The aforesaid circumstances would clearly postulates that the petitioner was employed for a fixed term, which shall come to an end after the expiry of the fixed period employment.

35. So, whilst looking from all possible angles and taking the holistic view of the matter in hand, by considering the peculiar and attendant facts and circumstances of the case, it could be legitimately summed up that since the petitioner had been opted to be engaged on fixed term basis for a particular period and his services came to an end on the expiry of contractual employment

which was extended from time to time, hence, the petitioner by way of nature of employment on fixed term basis cannot claim or press his right of reinstatement or re-engagement as a matter of right. Therefore, in view of the aforesaid binding precedents of the Hon'ble Supreme Court vis-a-vis the statements of learned counsel for the parties recorded at the time of the addressing argument, whereby Learned Counsel for the petitioner has stressed for the lump sum compensation to the sum of Rupees 1,50,000 (One Lac and Fifty thousand only), whereas the Learned Counsel for the respondent has urged that as per the conversation held with the company officials the company is ready and willing to pay a sum of Rupees 1,00,000 (One Lac only) to each individual workers. The statements of learned counsel for the parties to this effect has been recorded separately and placed on the record. Keeping in view that the present petition was instituted way back in the year 2017 and it took approximately Five years in deciding and disposing off the matter in the year 2022 as well as length of service of the petitioner, prevalent consumer price index coupled with present scenario of the inflation rate, I deem it appropriate to the increase and dearer prices of essential commodities, which is the need of the hour, to both ends of justice would be met. In a case, if a lump sum compensation is awarded to the petitioner, to be quantified and assessed to Rupees **1,20,000 (One Lac and Twenty thousand)**. The said amount has been awarded in liue of full and final settlement amount, to be calculated @ Rs. 75,000/- by the respondent company and @ Rs. 1,00,000/- offered during the course of argument by the respondent company which is assessed and calculated by this Court to be Rs. 1,20,000/-. Consequently, the petitioner is entitled to receive appropriate compensation from respondent. Since the services of the petitioner had been terminated despite the fact that the respondent company is in working condition, therefore, in the attendant facts and circumstances he is entitled to a lump sum compensation to be quantified and assessed at **₹1,20,000/- (One Lac and Twenty thousand only)**. All the issue is decided accordingly.

Issue No. 4 :

36. In order to prove this issue no specific evidence has been led by the respondent which could go to show as to how the present petition is not maintainable especially when the present petition has been filed by the petitioner after raising the demand notice (PW-1/B) before the Labour-*cum*-Conciliation Officer. I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

37. As a sequel, in the light of what has been discussed hereinabove while recording the findings on issues supra, respondent is hereby directed to pay a lump sum compensation of **Rupees 1,20,000 (One Lac and Twenty thousand**) to the petitioner in lieu of the full & final settlement amount including reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by respondent to the petitioner within three months from the date of receipt of Award, failing which the company shall be liable to pay the penal interest @ 9% per annum on the aforesaid amount from the date of award till the payment of actual realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to behind to bear their own costs respectively. The reference is answered accordingly.

38. Let a copy of this Award be communicated to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number : 88 of 2017

Instituted on : 10-08-2017

Decided on : 01-08-2022

Yogesh c/o Mangal Singh, r/o Village Khal Tibba, P.O. Saloa, Tehsil Shri Nainadevi Ji, District Bilaspur, H.P.

Versus

The Factory Manager Mondelez India Foods Pvt. Ltd., Unit-1 (formerly Cadbury India Ltd.) hadbast No. 199, Village Sandholi, P.O. and Tehsil Baddi, District Solan, H.P. through its Managing Director. . .*Respondent.*

Petition under section 2-A of the Industrial Disputes Act, 1947

For the Petitioners : Shri Vikas Rajput, Advocate

For the Respondent : Shri Rajiv Sharma, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**) preferred on behalf of Shri Yogesh (**hereinafter to be referred as the petitioner**) against the Factory Manager Mondelez India Foods Pvt. Ltd., Unit-1 (formerly Cadbury India Ltd.) Hadbast No. 199, Village Sandholi, P.O. and Tehsil Baddi, District Solan, H.P. through its Managing Director **(hereinafter to be referred as respondent company)**, for reinstatement of the services of the petitioner with full back-wages, seniority, continuity and all other consequential service benefits throughout and the break period of engagement and disengagement on account of fictional breaks be condoned in continuity of service for all purposes.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that the company dispensed the services of the petitioner orally without following the proper procedure laid down under the Act as neither any notice nor compensation has been paid to him. The denial of the employment to the petitioner and employing the persons who are much junior to him is not illegal but unjustified. The petitioner approached the respondent for time and again but of no avail. The work is available with the respondent but just to accommodate others, his services have been terminated on the ground of short term contract which is not sustainable.

3. The following prayer clause, has been appended, in the footnote of the claim petition:

"It is therefore, most respectfully prayed that in view of the aforesaid submissions made herein above, the Hon'ble Court may very kindly be granted the following relief in favour of the petitioner:

i. That the oral termination of the applicant may kindly be set aside with further directions to the respondent to reinstate the petitioner with full back wages, seniority, in continuity of service with all consequential benefits.

ii. That the respondents may further be directed to regularize the services of the applicant on the basis of policy framed by the State Government and on the basis of his seniority.

iii. That the respondents may kindly be directed to pay 9% interest on back wages and pay Rs. 5000/- as litigation cost as well as counsel fee.

iv. Any other order, as this Ld. Court may deem fit in the facts and circumstances of the case may kindly be passed in favour of the petitioner."

4. The lis was resisted and contested by the respondent filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, the petition is against the facts, law and procedure and the petitioner was retained/engaged purely on contractual basis.

5. On merits, it is submitted that the petitioner was engaged by the respondent management on fixed term employment, as per the certified standing orders as applicable to the respondent company and at the time of his engagement, he was clearly clarified with the fact that his services are purely on the basis of fixed term employment and shall come to an end on the expiry of fixed term employment. The petitioner was also apprised to the fact that his services can be again extended for a specific period by the respondent management, if the same are again required. Since, the services of the petitioner were purely on fixed term employment basis, hence, the question of completion of 240 days does not arise at all. The services of the petitioner were stand terminated, as per the terms of appointment letter. The provisions of sections 25-F, 25-G and 25-H are not applicable in the present case. It is, therefore, most respectfully prayed that the claim petition filed by the petitioner/workman, against the respondent, may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination vide Court order dated 15-06-2018:

1. Whether the termination of services of the petitioner without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue No.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petitioner was engaged by the respondent on fixed term employment basis, as alleged? . .*OPR.*

4. Whether the petition is not maintainable as alleged? . .*OPR.*

5. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	: Yes.
Issue No. 2	: The petitioner is entitled to lump sum compensation of ₹1,20,000/- (One Lac and Twenty Thousand only).
Issue No. 3	: Yes.
Issue No. 4	: No.
Relief	: Petition is partly allowed awarding lump sum compensation of ₹1,20,000/- (One Lac and Twenty Thousand only) per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

11. All these issues are intermingled and inter connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. **Shri Vikas Rajput**, Learned Counsel for petitioner has contended with all vehemence that the petitioner, who had been engaged on fixed term employment as a helper/workmen by the respondents and had worked continuously *w.e.f.* **05-09-2013** till **04-09-2016**, on which date his services were terminated without following the mandatory provisions of the Act. So, he is entitled to be reinstated in service by the respondent on the same post and with all service benefits including full back wages.

13. *Per contra, Shri Rajeev Sharma* Learned Counsel for the respondent has strenuously argued that as the petitioner was an employee on fixed term employment as per the model standing order, and not a permanent employee so there is no relationship of employee and employer between them.

14. It was again contended by learned counsel for the respondent that the services of the petitioner had been hired on a fixed term employment of contract and the respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term employment appointment letter issued to him. He has prayed for the dismissal of the claim petition.

15. Shri **Yogesh**, petitioner has stepped into the witness box as (PW-1) and tendered in

evidence his affidavit (PW-1/A), wherein he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on record the copy of demand notice (PW-1/B) and statement Mark X.

16. In the cross-examination, admitted that initially he was engaged for fixed term by the respondent vide letter (R-1). He admitted to have signed the extension letter dated 28-02-2015 (R-2) and salary revision letter (R-3). He admitted that when the contract came to end his service was automatically terminated. He denied to have received the full & final from the company.

17. Conversely, respondent examined three RWs in all. (RW-1) Shri Nikka Ram, Senior Assistant from the office of Labour Commissioner has stated that the requisitioned record is not available in the office as the same has been wedded out by the order of the Labour Commissioner, Shimla.

18. Shri Balram Barat, HR Manager of respondent company has also appeared into the witness box as (RW-2), who tendered into evidence his affidavit (RW-2/A), wherein he reiterated on oath the contents of the reply filed by the respondent in its entirety. He also tendered in evidence letters, requisition form, closure report, list of employees Mark RX-1 to Mark RX-10.

19. In the cross-examination, he admitted that the respondent company is in working condition. He further admitted that the petitioners completed 240 days in a calendar year. He denied that the mandatory provisions of sections 25-F and 25-G was not complied.

20. Shri Om Prakash, Manager of respondent company stepped into the witness dock as (RW-3) and tendered into evidence his affidavit (RW-3/A), wherein he reiterated on oath the contents of the reply filed by the respondent in its entirety. He also tendered in evidence documents (RW-3/B-1) to (RW-3/B-34) and employment on fixed term basis of the petitioner (RW-3/C-1) to (RW-3/C-41).

21. In cross-examination, he admitted that the petitioner had worked continuously with the company from the date of his employment. He further admitted that the petitioner had completed 240 working days in a calendar year. He denied that the mandatory provisions of the Act were not complied.

22. I have given my best anxious considerable thought to the rival contentions of the parties and also scrutinized the entire case record with minute care, caution and circumspection.

23. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear and established on the record that the petitioner was engaged by the respondent company on fixed term employment basis and under no circumstance will confer the petitioner any right to a permanent post, except as otherwise expressly set forth in the contract which shall came into force from 15-04-2013 and would remain in force till 15-09-2013 when the same stand automatically terminated at the end of the period of six months. It is quite evident from the appointment letter (R-1). The respondent had adopted the standing orders under Industrial Employment Standing Orders Act, 1946, in respect to the respondent company i.e. Cadbury India Pvt. Ltd. It is categorically mentioned under clause-3 (B-VIII) of the Standing Orders that there shall be a provision for fixed term employment/workman, which is one, who has been engaged on the basis of contract of employment for a fixed period. However, his working hours, wages, allowances and other benefits shall not be less than that of the permanent workman. He shall also be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even though his period of employment does not extend to the qualifying period of employment required in the institute.

24. Admittedly, there is no denying fact that the services of the petitioner are purely on temporary in nature on the fixed term employment and the same shall came to an end on the expiry of the fixed term as per letter of appointment/engagement issued under the Model Standing Orders, as applicable to the respondent company. There is again no denying fact that the petitioner was apprised of the fact that his services can be extended for a specific period, if the same are required by the respondent company. The services of the petitioner, therefore, were purely contractual in nature. The petitioner was engaged for a particular period and on the completion of the same, his services will be automatically terminated. The appointment letter was not only duly signed by the petitioner but he also opted to join the respondent company after appended his signatures thereby exposed his consent in writing on the said letter of engagement/appointment.

25. The sole question, which arises for its first and foremost for consideration, as per the contentions raised at the bar, is whether the verbal termination of his services without complying with the provisions of the Act, whereas persons junior to him have been retained/engaged, without following the principles of last come first go is illegal and unjustified. As a matter of fact, the petitioner had relied upon the provisions of section 2oo(bb) of the Act, alleging thereby that the termination of his services at the end of the said period is in contravention of the Act. Such act on the part of the respondent company without complying with the salient provisions of the Act amounted to "retrenchment" and furthermore, the fixed term employment is allegedly on contract basis as envisaged under section 2oo(bb) of the Act.

26. In the case in hand, it was asserted from the side of the petitioner that he was the employees of the respondent company. The petitioner had completed 240 working days of service within a period of twelve calendar months preceding the date of his termination and in view of the fact that no compensation has been paid as provided under section 25-F of the Act, the termination of services of the petitioners is illegal. It is therefore prayed that the respondent company may kindly be directed for his re-engagement with full back-wages.

27. Here, it would be relevant to reproduce section 2oo(bb) of the Act which reads as under:

> "**retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—**
>
> (*a*) voluntary retirement of the workman; or
>
> (*b*) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (*bb*)[2] termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

28. In the back-drop of the aforesaid events, this Court could legitimately concludes that the word "retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well-settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well-settled that the Parliament has employed the expression "the termination by the employer of the service of a workman for any

reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term 'retrenchment' a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term 'retrenchment', and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of 'retrenchment' de hors the reason for termination. To be excepted from within the meaning of 'retrenchment' the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of 'retrenchment'. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:—

(i) that the workman was employed in a project or scheme of temporary duration;

(*ii*) the employment was on a contract, and not as a daily-wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

(*iii*) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

(*iv*) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

29. This has been reitreated in the law laid down by the Hon'ble Apex Court in case titled as **S.M Ajkar and Ors.** *Vs.* **Telecom District Manager, Karnataka (2003) 4 SCC 27**. Similar is the law laid down by the Hon'ble Supreme Court in case titled as **S.M Nilakar and Ors.** *Vs.* **Telecom District Manager Karnataka (2003) 4 SCC 27 and Bhuvnesh Kumar Dwivedi** *Vs.* **Hindalco Industries Ltd., (2014) 11 SCC 437**.

30. Another significant fact of the case which was asserted from the side of the petitioner that he is/was the permanent employees of respondent, however, the respondent company had denied the fact and claimed that the petitioner was not the regular employee of the respondent company but he was engaged on fixed term employment. Therefore, in view of the aforesaid binding precedent the onus entirely shifts on the shoulder of the petitioner to prove the employee-employer relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person. However, it is the own pleaded case of respondent that the petitioners were employed by respondent on fixed term employment basis. Shri Himanshu Chitkara (RW1) has categorically admitted in his cross-examination that no termination letter was issued to the petitioner. He admitted that the company is still working and work is still available. In his substantive evidence, the petitioner clearly admitted to have signed the extension letter dated 28-02-2015 (R-2). He also admitted that when the contract came to end his services were automatically terminated. In view of the above, it is evident that the petitioner had worked with the respondent company on fixed term employment basis and his services had been terminated on the completion of fixed term employment.

31. Moresoover, the Hon'ble Supreme Court in the case of ***Uptron India Ltd Vs Shammi***

Bhan reported in 1998(6) SCC page 538 held that an employee can not be thrown of service by simple reason, even though the standing orders provides for the same. The Hon'ble Supreme Court in the case of ***G.M.Tanda Thermal Power Project vs. Jaya Prakash reported in 2008 LLR 30 SC*** held that Reinstatement of Workman is not tenable when they were engaged for a short period. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, both ends of justice would thus be met, in case the petitioners are granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as ***Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177*** and further reiterated lately in ***P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294***.

32. In all fairness, there is absolutely no denial to the fact that the petitioner was engaged and appointed as workers on fixed term employment basis with the respondent, who in order to mitigate the conduct towards the petitioner, has terminated the services of the petitioner on the completion of fixed term employment. Though, the services rendered by the petitioner has been extended further. In any case, the contention raised from the side of the petitioner cannot be accepted for the following reasons:

"**Firstly,**

> **The petitioner has not produced any material on record before this Court to prove that their initial engagement was to meet all required criteria under Contract Labour (Regulation and Abolition) Act, 1970 to be eligible to employ employees on contractual basis which includes licence number etc.**

Secondly,

> **The petitioner himself has admitted that when the contract came to end his services were automatically terminated.**

Thirdly,

> **The petitioner could not produce any material on record before this Court to show that he was not at all engaged or employed for any particular task or particular object on the completion of which his services deemed to have been terminated through non-renewal of their contract of employment.**

Lastly,

> **The respondent has succeeded in proving by leading the material evidence on record before this Court that the services of the petitioner were engaged for a particular task or particular order on the completion of which their services shall deemed to be automatically terminated.**

34. The aforesaid circumstances would clearly postulates that the petitioner was employed for a fixed term, which shall come to an end after the expiry of the fixed period employment.

35. So, whilst looking from all possible angles and taking the holistic view of the matter in hand, by considering the peculiar and attendant facts and circumstances of the case, it could be legitimately summed up that since the petitioner had been opted to be engaged on fixed term basis

for a particular period and his services came to an end on the expiry of contractual employment which was extended from time to time, hence, the petitioner by way of nature of employment on fixed term basis cannot claim or press his right of reinstatement or re-engagement as a matter of right. Therefore, in view of the aforesaid binding precedents of the Hon'ble Supreme Court vis-a-vis the statements of learned counsel for the parties recorded at the time of the addressing argument, whereby Learned Counsel for the petitioner has stressed for the lump sum compensation to the sum of Rupees 1,50,000 (One Lac and Fifty thousand only), whereas the Learned Counsel for the respondent has urged that as per the conversation held with the company officials the company is ready and willing to pay a sum of Rupees 1,00,000 (One Lac only) to each individual workers. The statements of learned counsel for the parties to this effect has been recorded separately and placed on the record. Keeping in view that the present petition was instituted way back in the year 2017 and it took approximately Five years in deciding and disposing off the matter in the year 2022 as well as length of service of the petitioner, prevalent consumer price index coupled with present scenario of the inflation rate, I deem it appropriate to the increase and dearer prices of essential commodities, which is the need of the hour, to both ends of justice would be met. In a case, if a lump sum compensation is awarded to the petitioner, to be quantified and assessed to Rupees **1,20,000 (One Lac and Twenty thousand)**. The said amount has been awarded in liue of full and final settlement amount, to be calculated @ Rs. 75,000/- by the respondent company and @ Rs. 1,00,000/- offered during the course of argument by the respondent company which is assessed and calculated by this Court to be Rs. 1,20,000/-. Consequently, the petitioner is entitled to receive appropriate compensation from respondent. Since the services of the petitioner had been terminated despite the fact that the respondent company is in working condition, therefore, in the attendant facts and circumstances he is entitled to a lump sum compensation to be quantified and assessed at **₹1,20,000/- (One Lac and Twenty thousand only)**. All the issue is decided accordingly.

Issue No. 4 :

36. In order to prove this issue no specific evidence has been led by the respondent which could go to show as to how the present petition is not maintainable especially when the present petition has been filed by the petitioner after raising the demand notice (PW-1/B) before the Labour-cum-Conciliation Officer. I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

37. As a sequel, in the light of what has been discussed hereinabove while recording the findings on issues supra, respondent is hereby directed to pay a lump sum compensation of **Rupees 1,20,000 (One Lac and Twenty thousand**) to the petitioner in lieu of the full & final settlement amount including reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by respondent to the petitioner within three months from the date of receipt of Award, failing which the company shall be liable to pay the penal interest @ 9% per annum on the aforesaid amount from the date of award till the payment of actual realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to behind to bear their own costs respectively. The reference is answered accordingly.

38. Let a copy of this Award be communicated to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 89 of 2017

Instituted on : 10-08-2017

Decided on : 01-08-2022

Mangal Singh s/o Shri Kanshi Ram, r/o Village Khal Tibba, P.O. Saloa, Tehsil Shri Nainadevi Ji, District Bilaspur, H.P. . .*Petitioner.*

Versus

The Factory Manager Mondelez India Foods Pvt. Ltd., Unit-1 (formerly Cadbury India Ltd.) hadbast No. 199, Village Sandholi, P.O. and Tehsil Baddi, District Solan, HP through its Managing Director. . .*Respondent.*

Petition under section 2-A of the Industrial Disputes Act, 1947

For the Petitioners : Shri Vikas Rajput, Advocate

For the Respondent : Shri Rajiv Sharma, Advocate

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**) preferred on behalf of Shri Mangal Singh (**hereinafter to be referred as the petitioner**) against the Factory Manager Mondelez India Foods Pvt. Ltd., Unit-1 (formerly Cadbury India Ltd.) Hadbast No. 199, Village Sandholi, P.O. and Tehsil Baddi, District Solan, H.P. through its Managing Director **(hereinafter to be referred as respondent company)**, for reinstatement of the services of the petitioner with full back-wages, seniority, continuity and all other consequential service benefits throughout and the break period of engagement and disengagement on account of fictional breaks be condoned in continuity of service for all purposes.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that the company dispensed the services of the petitioner orally without following the proper procedure laid down under the Act as neither any notice nor compensation has been paid to him. The denial of the employment to the petitioner and employing the persons who are much junior to him is not illegal but unjustified. The petitioner approached the respondent for time and again but of no avail. The work is available with the respondent but just to accommodate

others, his services have been terminated on the ground of short term contract which is not sustainable.

3. The following prayer clause, has been appended, in the footnote of the claim petition:

"It is therefore, most respectfully prayed that in view of the aforesaid submissions made herein above, the Hon'ble Court may very kindly be granted the following relief in favour of the petitioner:

i. That the oral termination of the applicant may kindly be set aside with further directions to the respondent to reinstate the petitioner with full back wages, seniority, in continuity of service with all consequential benefits.

ii. That the respondents may further be directed to regularize the services of the applicant on the basis of policy framed by the State Government and on the basis of his seniority.

iii. That the respondents may kindly be directed to pay 9% interest on back wages and pay Rs. 5000/- as litigation cost as well as counsel fee.

iv. Any other order, as this Ld. Court may deem fit in the facts and circumstances of the case may kindly be passed in favour of the petitioner."

4. The lis was resisted and contested by the respondent filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, the petition is against the facts, law and procedure and the petitioner was retained/engaged purely on contractual basis.

5. On merits, it is submitted that the petitioner was engaged by the respondent management on fixed term employment, as per the certified standing orders as applicable to the respondent company and at the time of his engagement, he was clearly clarified with the fact that his services are purely on the basis of fixed term employment and shall come to an end on the expiry of fixed term employment. The petitioner was also apprised to the fact that his services can be again extended for a specific period by the respondent management, if the same are again required. Since, the services of the petitioner were purely on fixed term employment basis, hence, the question of completion of 240 days does not arise at all. The services of the petitioner were stand terminated, as per the terms of appointment letter. The provisions of sections 25-F, 25-G and 25-H are not applicable in the present case. It is, therefore, most respectfully prayed that the claim petition filed by the petitioner/workman, against the respondent, may kindly be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination *vide* Court order dated 15-06-2018:

1. Whether the termination of services of the petitioner without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue No.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petitioner was engaged by the respondent on fixed term employment basis, as alleged? . .*OPR.*

4. Whether the petition is not maintainable as alleged? . .*OPR.*

5. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1	: Yes.
Issue No. 2	: The petitioner is entitled to lump sum compensation of ₹1,20,000/- (One Lac and Twenty Thousand only).
Issue No. 3	: Yes.
Issue No. 4	: No.
Relief	: Petition is partly allowed awarding lump sum compensation of ₹1,20,000/- (One Lac and Twenty Thousand only) per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

11. All these issues are intermingled and inter connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. **Shri Vikas Rajput**, Learned Counsel for petitioner has contended with all vehemence that the petitioner, who had been engaged on fixed term employment as a helper/workmen by the respondents and had worked continuously *w.e.f.* **05-09-2013** till **04-09-2016**, on which date his services were terminated without following the mandatory provisions of the Act. So, he is entitled to be reinstated in service by the respondent on the same post and with all service benefits including full back wages.

13. *Per contra, Shri Rajeev Sharma* Learned Counsel for the respondent has strenuously argued that as the petitioner was an employee on fixed term employment as per the model standing order, and not a permanent employee so there is no relationship of employee and employer between them.

14. It was again contended by learned counsel for the respondent that the services of the petitioner had been hired on a fixed term employment of contract and the respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term

employment appointment letter issued to him. He has prayed for the dismissal of the claim petition.

15. Shri **Mangal Singh**, petitioner has stepped into the witness box as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on record the copy of demand notice (PW-1/B) and statement Mark X.

16. In the cross-examination, admitted that initially he was engaged for fixed term by the respondent vide letter (R-1). He admitted to have signed the extension letter dated 28-02-2015 (R-2) and salary revision letter (R-3). He admitted that when the contract came to end his service was automatically terminated. He denied to have received the full & final from the company.

17. Conversely, respondent examined Shri Himanshu Chitkara, Employee Relations Manager as (RW-1), who tendered in evidence his affidavit (RW-1/A, wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of standing orders (RW-1/B) and the statement of full and final paid to the petitioner (RW-1/C). In cross-examination he admitted that the petitioner was initially engaged on 05-09-2013 and he continued as such till 04-09-2016. He admitted that no termination letter was issued to the petitioner. He denied that juniors to the petitioner are still working. He admitted that the company is still working and the work is available in the factory. He admitted that the petitioner had completed 240 days in each calendar year from the year 2013 to 2017. He denied that the respondent had defeated the provisions of the Act.

18. I have given my best anxious considerable thought to the rival contentions of the parties and also scrutinized the entire case record with minute care, caution and circumspection.

19. Thus, from a careful and meticulous examination of the entire case record, it is manifestly clear and established on the record that the petitioner was engaged by the respondent company on fixed term employment basis and under no circumstance will confer the petitioner any right to a permanent post, except as otherwise expressly set forth in the contract which shall came into force from 15-04-2013 and would remain in force till 15-09-2013 when the same stand automatically terminated at the end of the period of six months. It is quite evident from the appointment letter (R-1). The respondent had adopted the standing orders under Industrial Employment Standing Orders Act, 1946, in respect to the respondent company *i.e.* Cadbury India Pvt. Ltd. It is categorically mentioned under clause-3 (B-VIII) of the Standing Orders that there shall be a provision for fixed term employment/workman, which is one, who has been engaged on the basis of contract of employment for a fixed period. However, his working hours, wages, allowances and other benefits shall not be less than that of the permanent workman. He shall also be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even though his period of employment does not extend to the qualifying period of employment required in the institute.

20. Admittedly, there is no denying fact that the services of the petitioner are purely on temporary in nature on the fixed term employment and the same shall came to an end on the expiry of the fixed term as per letter of appointment/engagement issued under the Model Standing Orders, as applicable to the respondent company. There is again no denying fact that the petitioner was apprised of the fact that his services can be extended for a specific period, if the same are required by the respondent company. The services of the petitioner, therefore, were purely contractual in nature. The petitioner was engaged for a particular period and on the completion of the same, his services will be automatically terminated. The appointment letter was not only duly signed by the petitioner but he also opted to join the respondent company after appended his signatures thereby exposed his consent in writing on the said letter of engagement/appointment.

21. The sole question, which arises for its first and foremost for consideration, as per the contentions raised at the bar, is whether the verbal termination of his services without complying with the provisions of the Act, whereas persons junior to him have been retained/engaged, without following the principles of last come first go is illegal and unjustified. As a matter of fact, the petitioner had relied upon the provisions of section 2oo(bb) of the Act, alleging thereby that the termination of his services at the end of the said period is in contravention of the Act. Such act on the part of the respondent company without complying with the salient provisions of the Act amounted to "retrenchment" and furthermore, the fixed term employment is allegedly on contract basis as envisaged under section 2oo(bb) of the Act.

22. In the case in hand, it was asserted from the side of the petitioner that he was the employee of the respondent company. The petitioner had completed 240 working days of service within a period of twelve calendar months preceding the date of his termination and in view of the fact that no compensation has been paid as provided under section 25-F of the Act, the termination of services of the petitioners is illegal. It is therefore prayed that the respondent company may kindly be directed for his re-engagement with full back-wages.

23. Here, it would be relevant to reproduce section 2oo(bb) of the Act which reads as under:

> "**retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—**
>
> (*a*) voluntary retirement of the workman; or
>
> (*b*) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (*bb*)[2] termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

24. In the back-drop of the aforesaid events, this Court could legitimately concludes that the word "retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well-settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well-settled that the Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term 'retrenchment' a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term 'retrenchment', and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of 'retrenchment' de hors the reason for termination. To be excepted from within the meaning of 'retrenchment' the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of 'retrenchment'. The termination of service of a workman engaged in a scheme or project may not amount to

retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:—

(*i*) that the workman was employed in a project or scheme of temporary duration;

(*ii*) the employment was on a contract, and not as a daily-wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

(*iii*) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

(*iv*) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

25. This has been reitreated in the law laid down by the Hon'ble Apex Court in case titled as **S.M Ajkar and Ors. *Vs.* Telecom District Manager, Karnataka (2003) 4 SCC 27**. Similar is the law laid down by the Hon'ble Supreme Court in case titled as **S.M Nilakar and Ors. *Vs.* Telecom District Manager Karnataka (2003) 4 SCC 27 and Bhuvnesh Kumar Dwivedi *Vs.* Hindalco Industries Ltd., (2014) 11 SCC 437**.

26. Another significant fact of the case which was asserted from the side of the petitioner that he is/was the permanent employees of respondent, however, the respondent company had denied the fact and claimed that the petitioner was not the regular employee of the respondent company but he was engaged on fixed term employment. Therefore, in view of the aforesaid binding precedent the onus entirely shifts on the shoulder of the petitioner to prove the employee-employer relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person. However, it is the own pleaded case of respondent that the petitioners were employed by respondent on fixed term employment basis. Shri Himanshu Chitkara (RW1) has categorically admitted in his cross-examination that no termination letter was issued to the petitioner. He admitted that the company is still working and work is still available. In his substantive evidence, the petitioner clearly admitted to have signed the extension letter dated 28-02-2015 (R-2). He also admitted that when the contract came to end his services were automatically terminated. In view of the above, it is evident that the petitioner had worked with the respondent company on fixed term employment basis and his services had been terminated on the completion of fixed term employment .

27. Moresoover, the Hon'ble Supreme Court in the case of ***Uptron India Ltd Vs Shammi Bhan reported in 1998(6) SCC page 538*** held that an employee can not be thrown of service by simple reason, even though the standing orders provides for the same. The Hon'ble Supreme Court in the case of ***G.M.Tanda Thermal Power Project vs. Jaya Prakash reported in 2008 LLR 30 SC*** held that Reinstatement of Workman is not tenable when they were engaged for a short period. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, both ends of justice would thus be met, in case the petitioners are granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as ***Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177*** and further reiterated lately in ***P. Karupaiah***

(dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.

28. In all fairness, there is absolutely no denial to the fact that the petitioner was engaged and appointed as workers on fixed term employment basis with the respondent, who in order to mitigate the conduct towards the petitioner, has terminated the services of the petitioner on the completion of fixed term employment. Though, the services rendered by the petitioner has been extended further. In any case, the contention raised from the side of the petitioner cannot be accepted for the following reasons:

"**Firstly,**

> **The petitioner has not produced any material on record before this Court to prove that their initial engagement was to meet all required criteria under Contract Labour (Regulation and Abolition) Act, 1970 to be eligible to employ employees on contractual basis which includes licence number etc.**

Secondly,

> **The petitioner himself has admitted that when the contract came to end his services were automatically terminated.**

Thirdly,

> **The petitioner could not produce any material on record before this Court to show that he was not at all engaged or employed for any particular task or particular object on the completion of which his services deemed to have been terminated through non-renewal of their contract of employment.**

Lastly,

> **The respondent has succeeded in proving by leading the material evidence on record before this Court that the services of the petitioner were engaged for a particular task or particular order on the completion of which their services shall deemed to be automatically terminated.**

29. The aforesaid circumstances would clearly postulates that the petitioner was employed for a fixed term, which shall come to an end after the expiry of the fixed period employment.

30. So, whilst looking from all possible angles and taking the holistic view of the matter in hand, by considering the peculiar and attendant facts and circumstances of the case, it could be legitimately summed up that since the petitioner had been opted to be engaged on fixed term basis for a particular period and his services came to an end on the expiry of contractual employment which was extended from time to time, hence, the petitioner by way of nature of employment on fixed term basis cannot claim or press his right of reinstatement or re-engagement as a matter of right. Therefore, in view of the aforesaid binding precedents of the Hon'ble Supreme Court vis-a-vis the statements of learned counsel for the parties recorded at the time of the addressing argument, whereby Learned Counsel for the petitioner has stressed for the lump sum compensation to the sum of Rupees 1,50,000 (One Lac and Fifty thousand only), whereas the Learned Counsel for the respondent has urged that as per the conversation held with the company officials the company is ready and willing to pay a sum of Rupees 1,00,000 (One Lac only) to each individual workers. The statements of learned counsel for the parties to this effect has been recorded

separately and placed on the record. Keeping in view that the present petition was instituted way back in the year 2017 and it took approximately Five years in deciding and disposing off the matter in the year 2022 as well as length of service of the petitioner, prevalent consumer price index coupled with present scenario of the inflation rate, I deem it appropriate to the increase and dearer prices of essential commodities, which is the need of the hour, to both ends of justice would be met. In a case, if a lump sum compensation is awarded to the petitioner, to be quantified and assessed to Rupees **1,20,000 (One Lac and Twenty thousand)**. The said amount has been awarded in lieu of full and final settlement amount, to be calculated @ Rs. 75,000/- by the respondent company and @ Rs. 1,00,000/- offered during the course of argument by the respondent company which is assessed and calculated by this Court to be Rs. 1,20,000/-. Consequently, the petitioner is entitled to receive appropriate compensation from respondent. Since the services of the petitioner had been terminated despite the fact that the respondent company is in working condition, therefore, in the attendant facts and circumstances he is entitled to a lump sum compensation to be quantified and assessed at **₹1,20,000/- (One Lac and Twenty thousand only)**. All the issue is decided accordingly.

Issue No. 4

31. In order to prove this issue no specific evidence has been led by the respondent which could go to show as to how the present petition is not maintainable especially when the present petition has been filed by the petitioner after raising the demand notice (PW-1/B) before the Labour-*cum*-Conciliation Officer. I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

32. As a sequel, in the light of what has been discussed hereinabove while recording the findings on issues supra, respondent is hereby directed to pay a lump sum compensation of **Rupees 1,20,000 (One Lac and Twenty thousand**) to the petitioner in lieu of the full & final settlement amount including reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by respondent to the petitioner within three months from the date of receipt of Award, failing which the company shall be liable to pay the penal interest @ 9% per annum on the aforesaid amount from the date of award till the payment of actual realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to behind to bear their own costs respectively. The reference is answered accordingly.

33. Let a copy of this Award be communicated to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 233 of 2020

Instituted on : 22-09-2020
Decided on : 01-08-2022

Vijay Kumar s/o Shri Shuminder, r/o Village Devni Khera, PO Moginand, Tehsil Nahan, District Sirmour, H.P. . .*Petitioner*.

Versus

The Managing Director M/s SKS Metal Private Ltd., Mauza Ogli, Suketi Road, Kala Amb, District Sirmour, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 10-09-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

> "**Whether termination of services of Shri Vijay Kumar s/o Shri Shuminder, r/o Village Devni Khera, P.O. Moginand, Tehsil Nahan, District Sirmour, H.P. *w.e.f.* 31-12-2019 by the Managing Director M/s SKS Metal Private Ltd., Mauza Ogli, Suketi Road, Kala Amb, District Sirmour, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above management?"**

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 233 of 2020 and accordingly, notices were issued to both the parties. The petitioner had appeared in person on 30-12-2020, whereas the respondent despite having been served failed to appear before this Court, hence, vide order dated 15-3-2021, the respondent was proceeded against ex-parte. Since, 10-05-2022, this case is being listed for the service of the petitioner but neither the petitioner nor any counsel on his behalf had appeared before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court which seems that at present the petitioner is not interested to pursue his petition. Therefore, I am left with no other alternative but to decide the present application on the basis of material whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

> **"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;**".

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. Whereas, the State of Himachal Pradesh has framed rules called "The Industrial Disputes Rules, 1974." Similarly, Rule 25 thereof which reads thus:—

> **"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte. If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."**

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette.

11. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 234 of 2020

Instituted on : 22-09-2020

Decided on : 01-08-2022

Desh Raj s/o Shri Ranu Ram r/o Village Daulatpur, PO Kulthi, Tehsil & District Kangra, HP. . .*Petitioner.*

Versus

The Managing Director M/s SKS Metal Private Ltd., Mauza Ogli, Suketi Road, Kala Amb, District Sirmour, HP. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10-09-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

> "**Whether termination of services of Shri Desh Raj s/o Shri Ranu Ram, r/o Village Daulatpur, P.O. Kulthi, Tehsil & District Kangra, H.P. *w.e.f.* 31-12-2019 by the Managing Director M/s SKS Metal Private Ltd., Mauza Ogli, Suketi Road, Kala Amb, District Sirmour, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above management?"**

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 234 of 2020 and accordingly, notices were issued to both the parties. The petitioner had appeared in person on 30-12-2020, whereas the respondent despite having been served failed to appear before this Court, hence, *vide* order dated 15-3-2021, the respondent was proceeded against ex-parte. Since, 10-05-2022, this case is being listed for the service of the petitioner but neither the petitioner nor any counsel on his behalf had appeared before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court which seems that at present the petitioner

is not interested to pursue his petition. Therefore, I am left with no other alternative but to decide the present application on the basis of material whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. Whereas the State of Himachal Pradesh has framed rules called "The Industrial Disputes Rules, 1974."

Similarly, Rule 25 thereof which reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette.

11. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 235 of 2020

Instituted on : 22-09-2020

Decided on : 01-08-2022

Manoj Kumar s/o Shri Chander Bhan, r/o VPO Jangalberi, Tehsil Sujanpur, District Hamirpur, HP. . .*Petitioner*.

Versus

The Managing Director M/s SKS Metal Private Ltd., Mauza Ogli, Suketi Road, Kala Amb, District Sirmour, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 10-09-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

> "**Whether termination of services of Shri Manoj Kumar s/o Shri Chander Bhan, r/o VPO Jangalberi, Tehsil Sujanpur, District Hamirpur, H.P. *w.e.f.* 31-12-2019 by the Managing Director M/s SKS Metal Private Ltd., Mauza Ogli, Suketi Road, Kala Amb, District Sirmour, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above management?"**

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 235 of 2020 and accordingly, notices were issued to both the parties. The petitioner had appeared in person on 30-12-2020, whereas the respondent despite having been served failed to appear before this Court, hence, *vide* order dated 15-3-2021, the respondent was proceeded against ex-parte. Since, 10-05-2022, this case is being

listed for the service of the petitioner but neither the petitioner nor any counsel on his behalf had appeared before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court which seems that at present the petitioner is not interested to pursue his petition. Therefore, I am left with no other alternative but to decide the present application on the basis of material whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

> **"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;**".

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. Whereas the State of Himachal Pradesh has framed rules called "The Industrial Disputes Rules, 1974." Similarly, Rule 25 thereof which reads thus:—

> **"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."**

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette.

11. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of August, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 182 of 2018

Instituted on : 01-11-2018

Decided on : 08-08-2022

Dheeraj d/o Amrik Singh, r/o Village Kudanwala, P.O. Madhala, Tehsil Baddi, District Solan, H.P. . .*Petitioner.*

Versus

The Managing Director, Maharaja, Agrasen University, Atal Shiksha Kunj, Kalujhanda, P.O. Madhala, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act

For the Petitioner : Shri R.K Negi, Adv.

For the Respondent : Shri Rajiv Sharma, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 16-07-2018, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

> "**Whether termination of services of Ms. Dheeraj d/o Amrik Singh, r/o Village Kudanwala, P.O. Madhala, Tehsil Baddi, District Solan, H.P. by the Managing Director, Maharaja, Agrasen University, Atal Shiksha Kunj, Kalujhanda, P.O. Madhala, Tehsil Baddi, District Solan, H.P. *w.e.f.* 20-07-2017 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what amount of back-wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"**

2. To the fore, Ms. Dheeraj (hereinafter to be referred as the petitioner) has instituted the claim petition against the **Managing Director, Maharaja, Agrasen University, Atal Shiksha Kunj, Kalujhanda, P.O. Madhala, Tehsil Baddi, District Solan, H.P.** (**hereinafter to be referred as respondent University**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that she was employed as Lab. technician by the respondent University since 19-11-2015 and had drawn monthly salary of ₹ 12,500/-. She had worked with utmost sincerity, devotion and to the best of her abilities and always obeyed and complied the instructions of her superiors but on 20-7-2017, the respondent University had terminated her services in an illegal manner without affording an opportunity of being heard. She made several requests to her superiors but he was asked to receive the relieving order. She had made representation to the Labour Officer but the behavior of the respondent University remained adamant and levelled false and baseless allegations against the petitioner. The petitioner had her family have put to starvation due to the illegal and unjustified act of the respondent.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**It is therefore, prayed that this Hon'ble Court may very kindly be pleased to pass an order quashing/setting aside the termination order dated 20-7-2017, passed by the respondent being illegal, unjustified, null and void and is further prayed that respondent may also be directed to reinstate the services/employment of the petitioner with back-wages, seniority, past service benefits and compensation also for causing harassment to the petitioner in the interest of justice."**

5. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, gainfully employed and the petitioner was appointed to the post of Lab. Technician on 1-9-2016 as probationary and her service to be confirmed by letter of confirmation after successful completion of period of probation of two years.

6. On merits, the education, salary and appointment as Lab. Technician by the respondent University is an admitted fact. The date of appointment is denied. The petitioner was appointed on 1-9-2016. The petitioner on probation period of two years and her behavior was not upto the mater during the probation period, hence, her probationary services were terminated as per the terms and conditions of the letter of appointment. The respondent paid one month's salary in lieu of notice vide cheque No. 036066 dated 21-7-2017 and full & final payment *vide* cheque No. 032842 of the Axis Bank. The petitioner got her no dues slip signed from other department as per rules of the University. The petitioner signed full & final financial benefits statement. It is denied that the behavior of the petitioner was cordial in nature during the probation period. The work and behavior of the petitioner was not upto the satisfaction of the officers of the respondent University. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination vide Court order dated 22-11-2019, as under:

1. Whether the termination of the petitioner *w.e.f.* 20-07-2017 is violative of the provisions of the Industrial Disputes Act, as alleged? If so its effect thereto? . .*OPP.*

2. Whether the petitioner has failed to clear her probation successfully as alleged? If so, its effect thereto? . .*OPR.*

3. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes
Issue No. 2	No
Relief.	Reference is allowed awarding reinstatement in service with seniority and continuity along-with full back-wages.

Reasons for findings

Issue No. 1 :

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. To substantiate its case, the petitioner namely Ms. Dheeraj has appeared in the witness box as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition.

14. In cross-examination, she denied that she was appointed as Lab. Technician in the year 2016 but volunteered that she joined her duties in the year 2015. She admitted that she was appointed on probation period. She denied that during probation period, she did not adhere to adequate behavior for becoming Lab. technician as she used to remain absent from the Lab. and as such her conduct was not found satisfactory. She denied that she along-with her brother misbehaved with Mr. Deepak Bhagwat on 20-7-2017. She denied that her services were terminated on account of not finding her behavior proper and appropriate during probation period. She admitted to have been paid a cheque of Rs. 12500/- but denied that she also received a cheque of Rs. 6086/- for the salary of July month. She further denied that she had not completed 240 days in a calendar year.

15. In order to rebut, the respondent University has examined Shri Pankaj Nanglia, Dy. Registrar of the respondent University as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence letter of appointment dated 01-09-2016 (RW-1/B), relieving letter dated 20-7-2017 (Rw-1/C), no dues certificate (RW-1/D), reply to conciliation officer (RW-1/E), disobeying the office order (RW-1/F) and complaint (RW-1/G).

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri R.K Negi, Learned counsel for the petitioner has contended with all vehemence that the petitioner is squarely covered under the definition of "*workman" under* the Act and that the educational institutions are an industry in terms of Section 2(j) of the Act. The petitioner was engaged Lab. Technician by the respondent University and her services have been terminated illegally without complying with the provisions of the Act as no notice or compensation was paid to her. It is therefore prayed that the claim filed by the petitioner may kindly be allowed.

18. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent University urged that the the present claim petition is not maintainable as the university being an educational institution does not fall within the ambit of the Act. He further argued that since the petitioner was engaged on probation period of two years but she had not completed her probation period successfully, hence, she was rightly terminated from her duties as the work and conduct was not upto the satisfaction of her superiors. He also argued that the petitioner in her cross-examination had admitted that she was appointed on probation as such the respondent has every right to discontinue her services. It is therefore prayed that the claim petition may kindly be dismissed.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Before adverting to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act, in play in the instant case.

The Industrial Disputes Act, 1947, is:

"*An act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes".*

Section 2(s) defines a Workman as:

"*2(s). "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharge or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—*

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature]"

Section 2(oo) lays down the concept of retrenchment as:

"*Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*

(a) voluntary retirement of the workman;

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

(c) termination of the service of a workman on the ground of continued ill-health"

21. I am unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondents. The question "who is a workman" has been well settled by various judgments of the Hon'ble Supreme Court. In the case of ***H.R. Adyanthaya vs. Sandoz (India) Ltd. (1997) 5 SCC 737,*** a Constitution Bench of the Hon'ble Supreme Court has held as under:

"..We thus have three Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz, manual, clerical, supervisory or technical and two two-judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge Bench decisions which have without referring to the decisions in May & Baker, WIMCO and Bunnah Shell cases (supra) have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz, manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."

22. The issue whether an educational institution is an "industry", and its employees are "workmen" for the purpose of the Act has been answered by a Seven Judge Bench of the Hon'ble Supreme Court way back in the year 1978 in the case of ***Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors. (1978) 2 SCC 2013.*** It was held that educational institution is an industry in terms of Section 2(j) of the Act, though not all of its employees are workmen. It was held as under:

"***The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of***

employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesis, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations."

23. On careful perusal of the above mentioned two judgments of the Hon'ble Supreme Court clearly show that the definition of "workman" as given in Section 2(s) of the Act has been interpreted in the most wide terms. Even otherwise the import of the provisions itself is wide ranging. It has been defined in such a way to include any person doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Once a person is engaged for hire or reward, oblivious of the fact that whether the terms of employment are expressed or implied, a person would fall within the parameters of a "workman" atleast for the purposes of this Act. Even if a person is working on contract it cannot be said that he does not fall within the definition of a "workman". It could be that being a contractual employee his disengagement may not fall within the definition of "retrenchment" but the same would be dependent upon the requirements of Sub Section (bb) of the provisions of Section 2(oo) of the Act. However, merely being a contractual employee does not mean that a person will not fall within the definition of "workman". So, a contractual labourer/field assistant employed by a university, being an unskilled person, is a workman for the purpose of the Act.

24. In all fairness, without lamenting much stress on the arguments advanced before me by the Ld. Counsel for the parties, I may straightaway jump into the conclusion by referreing the pleadings as well as evidence adduced from the side of the respective parties. According to the petitioner, she was engaged as Lab. Assistant *vide* appointment letter dated 19-11-2015, however, as per the pleadings of the respondent, it is emphatically denied. According to the respondent University, the petitioner was engaged on 1-9-2016 and not on 19-11-2015. There is almost a gap of ten months in both the appointment letters. Admittedly, the services of the petitioner were terminated *vide* relieving order dated 30-7-2017. In order to substantiate their plea, both the respondent and petitioner had produced the appointment letter dated 19-11-2015 (PX) and 1-9-2016 (RW-1/B) on record. Now, this Court is astounded to see that there were two different appointment letters, issued in the name of the petitioner, on the letter pad of the University bearing the signatures of the Registrar and Stamp of the University. There arrives a strage situation before the Court as both the parties are alleging two different dates regarding the engagement of the services of the petitioner vide appointment letters. On bare perusal of both the appointment letters, it could be legitimately concluded with naked eye that both the appointment letters are on the same letter pad, bears the same signatures and bears the same insignia, round seal etc. Moreso, both the appointment letters bears the signatures of the similar person. Though, the respondent witness had denied the issuance of appointment letter (PX) but he has duly admitted that there is no clause of

period of probation found mentioned in the appointment letter dated 19-11-2015. He has also admitted that there was no show cause notice, retrenchment compensation or charge sheet served upon the petitioner. He denied that in para 3 of the reply of the respondent, it is admitted that the petitioner had worked satisfactorily during the said period. However, he denied that the appointment letter dated 19-11-2015 bears the signatures of the Registrar and Stamp of the University. On comparison of both the appointment letters, both appears to be issued by the respondent University itself. In any case, it is first appointment letter dated 19-11-2015 which shall prevail and override the effects of the subsequent appointment letter dated 9-1-2016 issued by the respondent University. Therefore, the first appointment letter shall prevail upon the subsequent second appointment letter. Not only this, the tone and tenor of both the appointment letters, signatory of the letter are almost identical and same. The only difference is with regard to the introduction of clause of period of probation of two years, which has been introduced in the second appointment letter and was not in first appointment letter. Before proceedings further, I would like to reproduce the appointment letter dated 19-11-2015, in verbatim, which reads as under:

No./MAU-HP/2015-

Dated: 19th November, 2015.

Letter of appointment

Ms. Dheeraj,
Village Kuranwala, PO Mandhala,
District Solan, HP- 173104.

I am pleased to offer you the post of Lab. Technician on contract basis for one year in Maharaja Agrasen School of Pharmacy of the Maharaha Agrasen University, Kalujhanda, Baddi *w.e.f.* the date of joining on the following terms and conditions:—

1. You will be entitled to total emoluments of Rs. 8,000/- (Rupees Eight Thousand only) per month (consolidated) inclusive of all allowances.

2. Your reporting and responsibilities shall be as assigned by your department/section Head.

3. It is expected that you will discharge your assigned duties with high standard of performance, quality, integrity and discipline.

4. The services may be terminated on either side at any time by giving 15 days notice. Upon termination of assignment, it would be obligatory on you part to get no dues certificate and proper relieving letter from the management of Maharaj Agrasen University.

5. You shall while in the services of the University, devote your full time and attention exclusively to the university work and responsibilities assigned to you as stated in para 2 above and you shall not engage in any other commercial/business pursuit, either part time or otherwise, for any monetary gains.

6. You shall be obliged to follow the work processes, technical standards, protocols and general instructions and service rules of the Maharaja Agrasen University as in force and/or as amended from time to time.

7. The appointment is subject to your being found medically fit.

8. Notwithstanding the provisions of clause 4, in case any information furnished or declaration given by you with regard to your employment with the Maharaja Agrasen University is found to be false or any material information has been willfully suppressed by you, the appointment shall be liable to be terminated forthwith without any notice or compensation whatsoever.

9. The contractual assignment shall stand cancelled on 18th November, 2016(Afternoon).

You are requested to sign this letter, signifying your acceptance of the above terms and conditions.

Yours faithfully,

(Registrar)

25. Similarly, the appointment letter dated 1-9-2016 is also reproduced for the sake of convenience, which reads as under:—

No/ MAU-HP/2015-16
Dated: 1st September, 2016.

Letter of appointment

Ms. Dheeraj,
Village Kuranwala, PO Mandhala,
District Solan, HP- 174103.

I am pleased to offer you the post of Lab. technician in Maharaja Agrasen School of Pharmacy of the Maharaha Agrasen University, Kalujhanda, Baddi w.e.f. the date of joining on the following terms and conditions:—

1. You will be entitled to total emoluments of Rs. 8,000/- (Rupees Eight Thousand only) per month (consolidated) inclusive of all allowances.

2. Your reporting and responsibilities shall be as assigned by your department/section Head.

3. You will be on probation for a period of two years from the date of joining. The probation period may be extended for such term as may be considered appropriate by the Management of Maharaja Agrasen University.

4. It is expected that you will discharge your assigned duties with high standard of performance, quality, integrity and discipline.

5. The services may be terminated on either side at any time by giving one month notice. Upon termination of assignment, it would be obligatory on you part to get no dues certificate and proper relieving letter from the management of Maharaj Agrasen University.

6. You shall while in the services of the University, devote your full time and attention exclusively to the university work and responsibilities assigned to you as stated in para

2 above and you shall not engage in any other commercial/business pursuit, either part time or otherwise, for any monetary gains.

7. You shall be obliged to follow the work processes, technical standards, protocols and general instructions and service rules of the Maharaja Agrasen University as in force and/or as amended from time to time.

8. The appointment is subject to submit of Medical Fitness Certificate duly issued by MBBS Doctor within 7 days joining.

9. Notwithstanding the provisions of clause 5, in case any information furnished or declaration given by you with regard to your employment with the Maharaja Agrasen University is found to be false or any material information has been willfully suppressed by you, the appointment shall be liable to be terminated forthwith without any notice or compensation whatsoever.

You are requested to sign this letter, signifying your acceptance of the above terms and conditions.

Yours faithfully,

(Registrar)

26. Verily, on perusal of both the appointment letters, I am of the considered humble opinion that the petitioner was infact engaged as Lab Technician *vide* appointment letter dated 19-11-2015 and not 1-9-2017. Gist of the matter that the appointment letter dated 1-9-2017, has been introduced later on just to fill the lacuna left out in the earlier appointment letter dated 19-11-2015 where there is no clause of period of probation of two years. It is again crystal clear that the respondent University has not only indulged in malafide but also tantamounts to unfair labour practice. The respondent University by issuing second appointment letter had tried their level best to befool not only the petitioner but also this Court, inserting thereby a clause of probation period of two years whereas there is no such clause of probation has been found mentioned in first appointment letter (PX) vide which the petitioner was engaged on contractual assignment for a period of one year only which shall stood cancelled on 18-11-2016. In any case, the new contractual assignment or appointment letter would have been issued by the respondent must be of 19-11-2016 or 18-11-2016 and not 1-9-2016. Therefore, the appointment letter dated 1-9-2016, is suffering from inherent defects and can be easily termed as bogus and sham document just to camouflage the first appointment letter. It is again proved manifestly on record that the averments in the second appointment letter dated 1-9-2016, issued by the respondent University to be illegal and unjustified, which is an afterthought expression. So, the entire edifice of the case of the respondent University based on the appointment letter dated 1-9-2016 by issuing relieving order dated 20-7-2017, making full & final settlement amount and terminating the services of the petitioner as per the terms and conditions of the appointment letter dated 1-9-2016, holds no legality in the eyes of law. A lie has no legs and a while lie has no legs to stand upon. Therefore, all the documentary proof supplied on record from the side of the respondent University *i.e.* letter of appointment dated 01-09-2016 (RW-1/B), relieving letter dated 20-7-2017 (RW-1/C), no dues certificate (RW-1/D), reply to conciliation officer (RW-1/E), disobeying the office order (RW-1/F) and complaint (RW-1/G) do not hold the crease before the stumps of the truth.

27. Admittedly, the petitioner had completed 240 working days with the respondent prior to the date of her relieving/termination. It is also admitted position on record that before terminataing the services of the petitioner neither any notice has been issued to her nor he was paid

any compensation as required under section 25-F of the Act. The very action on the part of the respondent University while relieving/terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Furthermore, at one side the respondent University had taken the stand that the work conduct and behavior of the petitioner was not satisfactory and such she was relieved from her duties and on other side in their reply they have duly appreciated the work and conduct of the petitioner. It is also admitted position on record that neither any show cause nor any enquiry had been conducted against the petitioner. Since, the petitioner has completed the requirement of days, hence, she is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**

(*a*) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(*b*) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(*c*) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

28. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of her retrenchment, her services could not have been terminated unless she was served with one month's mandatory notice or fifteen days' notice, as the case may be, and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

30. Another signifacant fact of the case is that the respondent University has raised the plea that the petitioner has not approached the Court with clean hands. Hence, I am of the considered opinion that it is not the petitioner but it is the respondent University themselves who have not come to the Court with clean hands and the respondent University has suppressed material facts from this Court and concocted a false story. The second appointment letter has been issued only to terminate the services of the petitioner by inserting a clause of probation period of two years, which is not there in the first appointment letter. Such conduct on the part of the respondent shows that they have tried their level best to befool not only the petitioner but also the Court. It is satisfactorily proved on record that the petitioner was engaged vide appointment letter dated 19-11-2015 and not 1-9-2016. At the cost of repetotion, the respondent University has indulged in an unfair labour practice and victimization of the petitioner.

31. For the foregoing reasons, this Court reaches to an inescapable conclusion that the terms of the services of the petitioner should be governed by the terms and conditions of first appiontment letter dated 19-11-2015 and not by second appointment letter dated 1-9-2016, hence, the termination of the services of the petitioner is illegal, unjust and nonest in the eyes of law. The respondent University failed to prove on record that the services of the petitioner had been governed by the terms and conditions of second appointment letter, therefore, the second appointment letter assumes no significance in the eyes of law. Since, the petitioner has suceeded in proving that termination of her services by the respondent University *w.e.f.* 20-07-2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified, hence, the petitioner is held entitled for the re-instatement in service on the same post and place with seniority and continuity along-with full back-wages. Both the issues are answered accordingly.

Relief :

32. As a sequent effect, in the light what has been discussed hereinabove while deciding issues No.1 & 2, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent university to re-engage the services of the petitioner on the same post and place from where she was relieved/terminated. The respondent University is also directed to grant seniority and continuity to the petitioner along-with full back-wages from the date of her illegal termination till her reengagement, failing which the same shall carry interest at the rate of 9% (nine percent) per annum to be paid by the respondent University to the petitioner. The reference is answered in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 8th day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 291 of 2020

Instituted on : 05-11-2020

Decided on : 08-08-2022

Meera Devi w/o Shri Ram Subhag c/o Shri Jagga Pradhan, VPO Barotiwala, Tehsil Baddi, District Solan, H.P. . .*Petitioner.*

Versus

The Factory Manager/ Managing Director M/s A & A Modular System, Plot No. 139, Village Sansiwala, PO Barotiwala, Tehsil Baddi, District Solan, HP. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner: None

For the Respondent Shri NarenderVerma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 21-10-2020, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

> "**Whether termination of services of Smt. Meera Devi w/o Shri Ram Subhag c/o Shri Jagga Pradhan, VPO Barotiwala, Tehsil Baddi, District Solan, HP by the Factory Manager/ Managing Director M/s A & A Modular System, Plot No. 139, Village Sansiwala, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. *w.e.f.* 23-3-2020 as alleged by the workman, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management**?"

2. On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 291 of 2020 and accordingly, notices were issued to both the parties. On 18-01-2021, the petitioner had appeared in person and thereafter Shri Prateek Kumar, Advocate had appeared for petitioner whereas Shri Narender Verma, Advocate had appeared for respondent.

3. In pursuance to the reference notification, the petitioner had filed her statement of claim whereby she had submitted that she was appointed as a worker with the respondent *w.e.f.* 03-01-2012 and her services have been terminated *w.e.f.* 18-05-2020, without following any procedure. She prayed that the petition filed by her may kindly be allowed and the respondent may kindly be directed to reinstate the services of the petitioner with all service benefit including full back-wages.

4. By filing reply, the respondent submitted that there has been insurgence worldwide Covid-19 pandemic and the Government of India imposed a countrywide lockdown in the month of March, 2020 due to which the government and non-government organizations had been closed and the work was also put on hold. The services of the petitioner were never terminated by the respondent. She was asked to re-join her duties but of no avail. The respondent prayed for the dismissal of the claim petition.

5. No rejoinder has been filed.

6. On elucidating the pleading of parties, the following issues were struck down by this Court for its final determination vide Court order dated 23-02-2022:

1. Whether the termination of the petitioner by the respondent *w.e.f.* 23-03-2020 without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified? . .*OPP.*

2. If issue No.1 is proved in affirmative then what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . .*OPR.*

4. Relief.

7. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

8. At the very out-set, it is particular to mention here that on 26-04-2022, Shri Prateek Kumar, Advocate has withdrawn his power of attorney to appear on behalf of the petitioner and the case was adjourned for 20-06-2022 on which date Shri R.K Khidtta, Advocate has put appearance on behalf of the petitioner and the case was fixed for the evidence of the petitioner for 06-07-2022 but on 06-07-2022 none appeared for petitioner and the case was further adjourned for 30-07-2022 for the service of the petitioner.

9. Verily, as per the reference the petitioner has alleged her termination *w.e.f.* 23-03-2020 to be illegal and unjustified but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to lead any evidence in order to show that her services have been illegally terminated by the respondent without complying with the provisions of the Industrial Dispute Act, 1947, it appears that the petitioner is not interested to pursue her case. The petitioner has miserably failed to prove on record by leading any kind of evidence i.e. oral or documentary to prove or substantiate her plea of illegal termination by not leading any evidence before this Court or putting her appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, in the absence of any evidence on record, the issues so framed by this Court vide order dated 23.02.2022 are answered in negative against the petitioner by holding that she is not entitled to any relief from this Court.

10. The award is passed accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
08-08-2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 27 of 2019

Instituted on : 03-01-2019

Decided on : 08-08-2022

Satish Kumar s/o Shri Mangat Ram r/o Village Dhoular, PO Mandhala, Tehsil Baddi, District Solan, H.P. . .*Petitioner.*

Versus

M/s Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, HP. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate.

For respondent : Shri R.K Khidtta, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 13-12-2018, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

> "**Whether termination of services of Shri Satish Kumar s/o Shri Mangat Ram, r/o Village Dhoular, P.O. Mandhala, Tehsil Baddi, District Solan, H.P. by the Factory Manager M/s Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. *w.e.f.* 16-08-2018, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"**

2. To the fore, Shri Satish Kumar (hereinafter to be referred as the petitioner) has instituted the claim petition against the **Factory Manager M/s Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. (hereinafter to be referred as respondent)** under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that he was working as helper with the respondent company since May, 2012 and drawing monthly salary of Rs. 6700/-. The petitioner has completed 240 days in each calendar year. The petitioner was the office bearer of workers union, who used to espouse the cause of the workers and raise the lawful demands of the workers and the respondent getting annoyed from the petitioner, lodged a false complaint through one Shri Manoj Mishra on 14-06-2017 and *w.e.f.* 15-06-2017, he was not allowed to enter the factory premises. The respondent without issuing any notice terminated the services of the petitioner. No retrenchment

compensation was paid to him. The termination of the petitioner is illegal and void and the same is result of without complying with the mandatory provisions of the Act.

4. The following prayer clause has been appended in the footnote of the claim petition.

"It is therefore, most respectfully prayed that this Hon'ble Court/Tribunal be pleased to allow the reference in favour of the workman/petitioner by holding his retrenchment/termination to be wholly improper and unjustified and consequentially holding the workman to be entitled to all service benefits including back-wages, seniority etc."

5. The lis was resisted and contested by the respondent filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not approached the Court with clean hands, no cause of action, due to illegal act of the petitioner the respondent company suffered huge losses and no cause of action and the petitioner gave beatings to the official of the company.

6. On merits, it is submitted that the petitioner was engaged as operator *w.e.f.* 1-3-2016 and the work & conduct of the petitioner during his service period never remained upto the mark as he indulged in illegal activities due to which the respondent company suffered huge loss. The petitioner committed major misconduct which was duly admitted by him. The workers has Hind Mazdoor Sabha, which is not registered and the workers are raising their demands through the aforesaid union and all the lawful demands are already fulfilled. It is submitted that the FIR was lodged against the petitioner as he gave beatings to Shri Manoj Mishra on 14-07-2017, regarding which a show cause notice was also issued to him. The petitioner was never stopped on the gate by the respondent company. The services of the petitioner were never terminated *w.e.f.* 15-06-2017. The petitioner was afforded number of opportunities to file the reply to the show cause notice and after following proper procedure his services were terminated. The petitioner is not entitled to any service benefits in view of the detailed reply filed hereinabove. It is therefore most respectfully prayed that the claim petition filed by the petitioner/workman against the respondent may kindly be dismissed with heavy cost.

7. No rejoinder has been filed.

8. On elucidating the pleading of parties, the following issues were struck down by this Court for its final determination *vide* Court order dated 23-8-2021:

1. Whether the termination of the petitioner *w.e.f.* 16-08-2018 in violation of the provisions of the Industrial Disputes Act is illegal and unjustified? . .*OPP.*

2. If issue No.1 is proved in affirmative then what relief the petitioner is entitled to? . .*OPP.*

3. Whether the petition is not maintainable as alleged? If so, its effect thereto? . .*OPR.*

4. Whether the petitioner has not come to this Court with clean hands and has suppressed material facts from this Court? . .*OPR.*

5. Relief.

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Yes
Issue No. 2	:	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue No. 3	:	No
Issue No. 4	:	No
Relief	:	Reference is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

12. Both these issues which are mutually existent and intrinsically connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

13. In order to substantiate its plea, the petitioner namely Satish Kumar examined himself as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A), wherein he has reiterated almost all the averments, as stated in the claim petition. He also tendered in evidence the termination letter (PW-1/B).

14. In cross-examination, he denied that on 14-07-2017, he picked up a quarrel with Manoj Mishra Manager who sustained voluntarily grievous hurt in the side scuffle. He denied to have issued show cause notice Mark RA to him. He also denied to have issued reminders to show cause notice Mark RB to Mark RD. He admitted that FIR No. 81/2017 dated 14-06-2017 was registered with PS Barotiwala.

15. In order to rebut, the respondent has examined Shri Jai Parkash Singh, Manager HR as (RW-1), who tendered in evidence his affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of show cause notice Mark RA, reminders Mark RB to Mark RD, copy of FIR Mark RE, cancel order Mark R-1 and undertaking Mark R-2.

16. In cross-examination, he admitted that the petitioner was engaged by the respondent as operator since May, 2012 on month salary of Rs. 6700/-. He admitted that the petitioner had completed 240 days in each calendar year. He denied that the wages for the month of October 2017 was given to the petitioner. He denied that neither the petitioner was issued any notice nor conducted any enquiry. He denied that the petitioner was terminated orally on 18-10-2017.

17. At the very out-set, Shri Niranjan Verma, Ld. Counsel for the petitioner contended with all vehemence that termination of the services of the petitioner amounts to retrenchment. Such retrenchment without issuing any notice and conducting any enquiry is in gross violation of the

provisions of the Act. The petitioner was not paid his due benefits and the respondent has adopted unfair labour practice. The retrenchment of the services of the petitioner is illegal, void and the same deserves to be quashed and set aside by ordering the reinstatement of the services of the petitioner.

18. *Per contra* Shri R.K Khidtta, Ld. Counsel for the respondent strenuously argued that the services of the petitioner were legally terminated by the respondent as the petitioner has picked up a quarrel with Manoj Mishra, Manager, who sustained voluntarily grievous hurt in the said scuffle. The respondent company had issued show cause notices to the petitioner whereby he admitted his fault, hence, his services were terminated by the respondent.

19. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

20. Thus, from the careful and meticulous examination of the case record, it is satisfactorily proved that the petitioner was engaged as helper since May, 2012. More so, the witness examined by the respondent company (RW-1) has admitted that the services of the petitioner have been engaged since May, 2012. From this admission, it is admittedly proved on record that the petitioner had joined his duties with the respondent company since May, 2012 and worked as such till the date of his termination. According to the petitioner, his services were terminated *w.e.f.* 15-06-2017. Admittedly, the petitioner come within the definition of workman which is otherwise not disputes from the side of the respondent. The defence raised from the side of the respondent that the services of the petitioner were disengaged because he had involved in illegal activities due to which the respondent company had suffered losses. Again at the cost of repetition, the respondent company has failed to substantiate by placing on record any such documentary proof which could go to show that the petitioner had involved in illegal activities which caused losses to the company.

21. Now, the question which arises for determination, before this Court as to whether in terminating the services of the petitioner, the respondent has violated the provisions of the Act or not. It is an admitted position on record that the petitioner had worked with the respondent company w.e.f. May, 2012 till 16-08-2017 and had completed 240 working days in each calendar year. It is further the admitted position on record that before terminating the services of the petitioner neither any enquiry was conducted nor he was paid retrenchment compensation. Such being the position, it stand proved on record that the workman/petitioner had worked for the required 240 days of working in the period of twelve calendar months preceding the date of termination, he is entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are attracted in this case. It is also admitted that before retrenching the services of the petitioner neither any notice nor compensation has been paid to the petitioner as provided under section 25-F of the Act. Then, it stood clearly established from the admission made by the respondent (RW-1) that the petitioner had worked for 240 days in the preceding twelve calendar months prior to his disengagement. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

> *"25-F.* ***Conditions precedent to retrenchment of workmen.****—No workman employed in any industry who has been in* ***continuous service for not less than one year under an employer shall be retrenched by that employer until—***
>
> *(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:*

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

23. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in its utter regard, in letter and spirit. The notice terminating the services of the petitioner vide termination dated 16-08-2017 is not in conformity with Section 25-F of the Act. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

24. The petiotiner in his affidavit (PW-1/A) has maintained that the persons junior to him have been retained by the respondent company in violation of the provisions of section 25-G of the Act but such deposition on the part of the petitioner would not be sufficient. He has misresably failed to prove on record by leading documentary evidence that the person junior to him are still working with the respondent company. Therefore, in the absence of any evidence on record, it cannot be said that the respondent has violated the provisions of section 25-G of the Act.

25. It is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

26. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In case titled as **Kanpur Electricity Supply Company Limited *Vs.* Shamim Mirza, (2009) 1 SCC 20,** the Hon'ble Apex Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Apex Court in case titled as M/s Ritu Marbals *Vs.* Prabhakant Shukla 2010 (1) SLJ S.C 70,** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

27. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in case titled as Kendriya Vidyalaya Sangathan and another *Vs.* S.C Sharma, (2005) 2 Supreme Court Cases, 363** that:

> **16. "When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim"**

28. With regard to the merits of the case, there is no denying fact as evident from the testimony of Jai Prakash, Manager HR (RW-1) that the petitioner was offered employment or engagement as an operator *w.e.f.* 19-05-2008 on monthly salary and he had worked as such continuously in such capacity till the time of his termination *i.e.* 16-08-2017. The respondent witness also admitted the fact that the petitioner had completed satisfactorily 240 working days in each calendar year. The respondent witness also admitted that neither the petitioner was issued any show cause notice nor subjected to any domestic enquiry. The admissions on the part of the respondent witness are strengthening the case of the petitioner bolstered with double strength as all the averments made thereto in the petition stood duly admitted. The only contention raised from the side of the respondent that the company had suffered losses due to the act and conduct of the petitioner. To substantiate the said plea, the respondent placed reliance of document Mark R-1 *i.e.* cancel order due to strike in November, 2017. No witness has been examined to prove the losses. A document which is simply marked and not exhibited on record in accordance with law cannot be looked or peeped into for any purpose. In my humble opinion the respondent company has miserably failed to substantiate their plea. In any case, for the sake of convenience, it is admitted that the respondent company had incurred losses, even, though I failed to understand that what prevented the respondent company to comply the mandatory requirement of sections 25-B and 25-F of the Act.

29. For the foregoing reasons, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in the stated legal position mentioned herein ibid, I find that the respondent was not at all justified in passing the termination order dated 16-08-2017. In view of the entire evidence, on

record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is entitled for reinstatement in service with continuity and seniority. However, the petitioner is not entitled to any back-wages. Hence, both these issues are decided in favour of the petitioner and against the respondent.

Issues No.3 & 4 :

30. Both these issues which are mutually existent and intrinsically connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

31. In order to prove these issues no specific evidence has been led by the respondent which could go to show that as to how the present petition is not maintainable especially when it stand proved on record that the services of the petitioner have been terminated in contravention of the provisions of the Act. Furthermore, the respondent has also failed to prove on record that the petitioner has suppressed material facts from this Court and not come to this Court with clean hands. In the absence of any evidence both these issues are decided in favour of the petitioner and against the respondent.

Relief :

32. As a sequel to my above discussion and findings on issues No. 1 to 4, the claim of the petitioner succeeds and is hereby partly allowed. **Resultantly, the petitioner is ordered to be reengaged in service forthwith subject to seniority and continuity. However, the petitioner is not entitled to back wages** as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. In the attendant facts and circumstance of the case, no order as to costs.

33. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to record.

Announced in the open Court today this 8th day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 28 of 2019

Instituted on : 03-01-2019

Decided on : 08-08-2022

Gopal Singh s/o Shri Ram Pratap, r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. . .*Petitioner.*

Versus

M/s Ultra Tech. Pharmaceuticals, Village Tipra, P.O Surajpur, Tehsil Baddi, District Solan, HP. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate

For respondent : Shri R.K Khidtta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 13-12-2018, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

"**Whether termination of services of Shri Gopal Singh s/o Shri Ram Pratap r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. by the Factory Manager M/s Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. *w.e.f.* 16-08-2018, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"**

2. To the fore, Shri Gopal Singh (hereinafter to be referred as the petitioner) has instituted the claim petition against the **Factory Manager M/s Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. (hereinafter to be referred as respondent)** under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that he was working as Operator with the respondent company since 19-05-2008 and drawing monthly salary of Rs. 10,000/-. The petitioner has completed 240 days in each calendar year. The petitioner was the President of workers union, who used to espouse the cause of the workers and raise the lawful demands of the workers and the respondent getting annoyed from the petitioner, lodged a false complaint through one Shri Manoj Mishra on 14-06-2017 and *w.e.f.* 15-06-2017, he was not allowed to enter the factory premises. The respondent without issuing any notice terminated the services of the petitioner. No retrenchment compensation was paid to him. The termination of the petitioner is illegal and void and the same is result of without complying with the mandatory provisions of the Act.

4. The following prayer clause has been appended in the footnote of the claim petition.

"It is therefore, most respectfully prayed that this Hon'ble Court/Tribunal be pleased to allow the reference in favour of the workman/petitioner by holding his retrenchment/termination to be wholly improper and unjustified and consequentially holding the workman to be entitled to all service benefits including back-wages, seniority etc."

5. The lis was resisted and contested by the respondent filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not approached the Court with clean hands, no cause of action, due to illegal act of the petitioner the

respondent company suffered huge losses and no cause of action and the petitioner gave beatings to the official of the company.

6. On merits, it is submitted that the petitioner was engaged as operator *w.e.f.* 26-11-2008 and the work & conduct of the petitioner during his service period never remained upto the mark as he indulged in illegal activities, due to which the respondent company suffered huge loss. The petitioner committed major misconduct which was duly admitted by him. The workers has Hind Mazdoor Sabha, which is not registered and the workers are raising their demands through the aforesaid union and all the lawful demands are already fulfilled. It is submitted that the FIR was lodged against the petitioner as he gave beatings to Shri Manoj Mishra on 14-07-2017 regarding which a show cause notice was also issued to him. The petitioner was never stopped on the gate by the respondent company. The services of the petitioner were never terminated *w.e.f.* 15-06-2017. The petitioner was afforded number of opportunities to file the reply to the show cause notice and after following proper procedure his services were terminated. The petitioner is not entitled to any service benefits in view of the detailed reply filed hereinabove. It is therefore most respectfully prayed that the claim petition filed by the petitioner/workman against the respondent may kindly be dismissed with heavy cost.

7. No rejoinder has been filed.

8. On elucidating the pleading of parties, the following issues were struck down by this Court for its final determination *vide* Court order dated 23-8-2021:

1. Whether the termination of the petitioner *w.e.f.* 16-08-2018 in violation of the provisions of the Industrial Disputes Act is illegal and unjustified? . .*OPP.*

2. If issue No. 1 is proved in affirmative then what relief the petitioner is entitled to? . .*OPP.*

3. Whether the petition is not maintainable as alleged? If so, its effect thereto? . .*OPR.*

4. Whether the petitioner has not come to this Court with clean hands and has suppressed material facts from this Court? . .*OPR.*

5. Relief.

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Yes.
Issue No. 2	:	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue No. 3	:	No.

Issue No. 4 : No.

Relief : Reference is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 & 2 :

12. Both these issues which are mutually existent and intrinsically connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

13. In order to substantiate its plea, the petitioner namely Gopal Singh examined himself as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A), wherein he has reiterated almost all the averments, as stated in the claim petition. He also tendered in evidence the identity card (PW-1/B).

14. In cross-examination, he denied that on 14-07-2017, he picked up a quarrel with Manoj Mishra Manager who sustained voluntarily grievous hurt in the side scuffle. He denied to have issued show cause notices/warning letter Mark RA to Mark RD to him. He also denied to have issued reminders to show cause notices Mark RE to Mark RH. He also denied that FIR No. 81/2017 dated 14-06-2017 was registered with PS Barotiwala. He admitted that there is no registered union in the company.

15. In order to rebut, the respondent has examined Shri Jai Parkash Singh, Manager HR as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of show cause notice Mark RA, warning letter Mark RB, Notice mark RC and RD, reminders mark RE to Mark RH, termination letter Mark RJ, writing dated 23-09-2015 Mark RK, copy of FIR Mark RL, complaint Mark RM cancel order Mark R-1 and undertaking Mark R-2.

16. In cross-examination, he admitted that the petitioner was engaged by the respondent as operator since 19-5-2008 on month salary of Rs. 10,000/-. He admitted that the petitioner had completed 240 days in each calendar year. He denied that the wages for the month of October 2017 was given to the petitioner. He denied that neither the petitioner was issued any notice nor conducted any enquiry. He denied that the petitioner was terminated orally on 16-08-2017.

17. At the very out-set, Shri Niranjan Verma, Ld. Counsel for the petitioner contended with all vehemence that termination of the services of the petitioner amounts to retrenchment. Such retrenchment without issuing any notice and conducting any enquiry is in gross violation of the provisions of the Act. The petitioner was not paid his due benefits and the respondent has adopted unfair labour practice. The retrenchment of the services of the petitioner is illegal, void and the same deserves to be quashed and set aside by ordering the reinstatement of the services of the petitioner.

18. *Per contra* Shri R.K Khidtta, Ld. Counsel for the respondent strenuously argued that the services of the petitioner were legally terminated by the respondent as the petitioner has picked up a quarrel with Manoj Mishra, Manager, who sustained voluntarily grievous hurt in the said scuffle. The respondent company had issued show cause notices to the petitioner whereby he admitted his fault, hence, his services were terminated by the respondent.

19. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

20. Thus, from the careful and meticulous examination of the case record, it is satisfactorily proved that the petitioner was engaged as operator since 19.05.2008. More so, the witness examined by the respondent company (RW-1) has admitted that the services of the petitioner have been engaged on 19-05-2008. From this admission, it is admittedly proved on record that the petitioner had joined his duties with the respondent company on 19-05-2008 and worked as such till the date of his termination. According to the petitioner, his services were terminated w.e.f. 16-08-2017. Admittedly, the petitioner come within the definition of workman which is otherwise not disputes from the side of the respondent. The defence raised from the side of the respondent that the services of the petitioner were disengaged because he had involved in illegal activities due to which the respondent company had suffered losses. Again at the cost of repetition, the respondent company has failed to substantiate by placing on record any such documentary proof which could go to show that the petitioner had involved in illegal activities which caused losses to the company.

21. Now, the question which arises for determination, before this Court as to whether in terminating the services of the petitioner, the respondent has violated the provisions of the Act or not. It is an admitted position on record that the petitioner had worked with the respondent company *w.e.f.* 19-05-2008 till 16-08-2017 and had completed 240 working days in each calendar year. It is further the admitted position on record that before terminating the services of the petitioner neither any enquiry was conducted nor he was paid retrenchment compensation. Such being the position, it stand proved on record that the workman/petitioner had worked for the required 240 days of working in the period of twelve calendar months preceding the date of termination, he is entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are attracted in this case. It is also admitted that before retrenching the services of the petitioner neither any notice nor compensation has been paid to the petitioner as provided under section 25-F of the Act. Then, it stood clearly established from the admission made by the respondent (RW-1) that the petitioner had worked for 240 days in the preceding twelve calendar months prior to his disengagement. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

> *"25-F.* ***Conditions precedent to retrenchment of workmen.****— No workman employed in any industry who has been in* ***continuous service for not less than one year under an employer shall be retrenched by that employer until—***
>
> *(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:*
>
> *(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
>
> *(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

22. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the

employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

23. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in its utter regard, in latter and spirit. The notice terminating the services of the petitioner vide termination dated 16-08-2017 is not in conformity with Section 25-F of the Act. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

24. The petitioner in his affidavit (PW-1/A) has maintained that the persons junior to him have been retained by the respondent company in violation of the provisions of section 25-G of the Act but such deposition on the part of the petitioner would not be sufficient. He has miserably failed to prove on record by leading documentary evidence that the person junior to him are still working with the respondent company. Therefore, in the absence of any evidence on record, it cannot be said that the respondnet has violated the provisoins of section 25-G of the Act.

25. Conclusively, it is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

26. Next comes the question, which arises for consideration, before this Tribunal is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In case titled as **Kanpur Electricity Supply Company Limited *Vs.* Shamim Mirza,**

(2009) 1 SCC 20, the Hon'ble Apex Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Apex Court in case titled as M/s Ritu Marbals *Vs.* Prabhakant Shukla 2010 (1) SLJ S.C 70,** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

27. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in case titled as Kendriya Vidyalaya Sangathan and another *Vs.* S.C Sharma, (2005) 2 Supreme Court Cases, 363** that:

> **16. "When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim"**

28. Having best regard to the merits of the case, there is no denying fact as evident from the testimony of Jai Prakash, Manager HR (RW-1) that the petitioner was offered employment or engagement as an operator *w.e.f.* 19-05-2008 on monthly salary and he had worked as such continuously in such capacity till the time of his termination *i.e.* 16-08-2017. The respondent witness also admitted the fact that the petitioner had completed satisfactorily 240 working days in each calendar year. The respondent witness also admitted that neither the petitioner was issued any show cause notice nor subjected to any domestic enquiry. The admissions on the part of the respondent witness are strengthening the case of the petitioner bolstered with double strength as all the averments made thereto in the petition stood duly admitted. The only contention raised from the side of the respondent that the company had suffered losses due to the act and conduct of the petitioner. To substantiate the said plea, the respondent placed reliance of document Mark R-1 *i.e.* cancel order due to strike in November, 2017. No witness has been examined to prove the losses. A document which is simply marked and not exhibited on record in accordance with law cannot be looked or peeped into for any purpose. In my humble opinion the respondent company has miserably failed to substantiate their plea. In any case, for the sake of convenience, it is admitted that the respondent company had incurred losses, even, though I failed to understand that what prevented the respondent company to comply the mandatory requirement of sections 25-B and 25-F of the Act.

29. For the foregoing reasons, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in the stated legal position mentioned herein ibid, I find that the respondent was not at all justified in passing the termination order dated 16-08-2017. In view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is entitled for reinstatement in service with continuity and seniority. However, the petitioner is not entitled to any back-wages. Hence, both these issues are decided in favour of the petitioner and against the respondent.

Issues No.3 & 4 :

30. Both these issues which are mutually existent and intrinsically connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

31. In order to prove these issues no specific evidence has been led by the respondent which could go to show that as to how the present petition is not maintainable especially when it stand proved on record that the services of the petitioner have been terminated in contravention of the provisions of the Act. Furthermore, the respondent has also failed to prove on record that the petitioner has suppressed material facts from this Court and not come to this Court with clean hands. In the absence of any evidence both these issues are decided in favour of the petitioner and against the respondent.

Relief :

32. As a sequel to my above discussion and findings on issues No. 1 to 4, the claim of the petitioner succeeds and is hereby partly allowed. **Resultantly, the petitioner is ordered to be reengaged in service forthwith subject to seniority and continuity. However, the petitioner is not entitled to back wages** as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. In the attendant facts and circumstances of the case, no orders as to cost.

32. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to record.

Announced in the open Court today this 8th day of August, 2022.

Sd/-
*(*RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number	:	99 of 2021
Instituted on	:	05-05-2021
Decided on	:	8-8-2022

Rajpal Verma, r/o Near Anil Shop, Police Line Kaithu, Shimla through General Secretary, H.P. Medical Representatives Association (Affiliated to Federation of Medical and Sales Representative's Association of India and CITU) Chobatta Street, Mandi, District Mandi, H.P.
. .*Petitioner.*

Versus

1. The Director, M/s Integrace Health Pvt. Ltd., A-06/7/8A, 2nd Floor, ALBS Marg Kurla (west) Mumbai.

2. The Chief Human Resource Officer M/s Integrace Health Pvt. Ltd., A-06/7/8A, 2nd Floor, A wing Art Guild House, LBS Marg, Kurla (West) Mumbai. . .*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.

For the Respondent: Nemo.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 09-04-2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether demand raised by Shri Rajpal Verma, r/o Near Anil Shop, Police Line Kaithu, Shimla through General Secretary, H.P. Medical Representatives Association (Affiliated to Federation of Medical and Sales Representative's Association of India and CITU) Chobatta Street, Mandi, District Mandi, H.P. regarding transfer of his services *vide* transfer order dated 08-09-2020 from Shimla HQ to Delhi HQ *vide* demand notice dated 14-09-2020 (copy enclosed) by (i) the Director, M/s Integrace Health Pvt. Ltd., A-06/7/8A, 2nd Floor, ALBS Marg Kurla (west) Mumbai (ii) The Chief Human Resource Officer M/s Integrace Health Pvt. Ltd., A-06/7/8A, 2nd Floor, A wing Art Guild House, LBS Marg, Kurla (West) Mumbai, is legal and justified? If not, what kind of service benefits, financial relief and other consequential service benefits including compensation the above workman is entitled to from the said employer under the Industrial Disputes Act, 1947**?"

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 99 of 2021 and accordingly, notices were issued to both the parties. This case is being listed for the service of the parties since 05-05-2021, but none appeared. On 14-09-2021 and 30-11-2021, the petitioner had appeared in person whereas none had appeared on behalf of the respondent. After 03-01-2022, the petitioner also failed to appear and this Court/Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference which also seems that the petitioner is not interested to pursue this reference petition by filing statement of claim. Such being the situation, now, I am left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

4. As per the reference received from the appropriate government, the petitioner has raised the demand regarding transfer of his services *vide* transfer order dated 08-09-2020 from Shimla headquarter to Delhi Headquarter vide demand notice dated 14-09-2020, but, the petitioner has failed to appear before this Court despite having been served in accordance with law and having the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that the demand raised by the petitioner vide demand notice dated 14.09.2020 is legal and justified, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence i.e. oral or documentary to prove or substantiate his plea of illegal transfer orders dated 08.09.2020 by not filing any claim petition before this Court or putting

his appearance before the Court in order to establish that the transfer of the petitioner is in violation of mandatory provisions of the Industrial Disputes Act. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

5. File, after completion, be consigned to record room.

Announced:
8-8-2022

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number : 07 of 2019

Instituted on : 19.02.2019

Decided on : 08.08.2022

Harish Thakur s/o Shri Lekh Ram Thakur, r/o VPO Kanda, Tehsil Kasauli, District Solan, H.P. . .*Petitioner* .

Versus

1. The Managing Director, The Bhagat Urban Cooperative Bank Ltd., Solan, District Solan, H.P.

2. Branch Manager, The Bhagat Urban Cooperative Bank Ltd., Parwanoo, District Solan, HP.

3. AP Securities (P) Ltd., SCO 23-24, 1st Floor Ambala High Way, Near Corporation Bank Zirakpur (Punjab). . .*Respondents.*

Claim petition under section 2-A of the Industrial Disputes Act

For the Petitioner : Shri R. K. Khidtta, Adv.

For the Respondent No.1 & 2 : Shri Narender Verma, Adv.

For the Respondent No. 3 : Shri Hardeep Verma, Adv.

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**) preferred on behalf of Shri Harish Thakur (**hereinafter to be referred as the petitioner**) against the Managing Director, The Bhagat Urban Cooperative Bank Ltd. Solan (**hereinafter to be referred as the respondent No. 1**), The Branch Manager, The Bhagat Urban Cooperative Bank Ltd., Parwanoo, District Solan, H.P. **(hereinafter to be referred as respondent No. 2)** and AP Securities (P) Ltd. (**hereinafter to be referred as the respondent no.3**), with the prayer to set aside the impugned oral dismissal order of the services of the petitioner *w.e.f.* 28-02-2017, passed by the respondents and further with direction to reinstate the services of the petitioner with all consequential service benefits including full back-wages and the services of the petitioner may kindly be regularized as the petitioner has already completed more than six years' service with the respondents.

2. Material facts necessary for the disposal of the present petition as alleged by the petitioner in the statement of claim are thus that he was initially appointed as peon-*cum*-night guard under respondents Bank on 30-04-2011 and worked as such till 05-03-2013 continuously and thereafter the services of the petitioner have been terminated *w.e.f.* 06-03-2013. After some time, the petitioner was again re-engaged by the respondents Bank *w.e.f.* 01-11-2013 as peon and worked as such till 28-02-2017. The petitioner has been shown to be engaged through respondent No. 3 but in fact the petitioner was engaged by the respondents Bank. The attendance of the petitioner was verified and signed by respondent No. 2. The leave was sanctioned by the Manager of respondent No. 2 and the respondents Bank has also issued experience certificate in favour of the petitioner. The services of the petitioner have been illegally terminated by the respondents Bank *w.e.f.* 28-02-2017, without following the mandatory provisions of the Act. The petitioner has already completed 240 working days in each calendar year, hence, the impugned oral termination order passed by the respondents bank, is illegal, unjustified and against the principles of natural justice. It is averred that the respondent No. 2 had taken day and night duties from the petitioner, but full salary and over time was not paid to him. It is further averred that the petitioner was the employee of the bank for all purposes and was not the employee of respondent Bank and the contract between the respondents was nothing but a camouflage to over care the intricacy of law. The respondent No. 3 has no role in the working of the petitioner as the work was taken by respondent No. 1.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the claim petition filed by the petitioner may kindly be allowed and the impugned oral dismissal of the services of the petitioner *w.e.f.* 28-2-2017, passed by the respondent No. 1 and 2 may kindly be quashed and set aside and the respondent No. 1 and 2 may kindly be directed to reinstate the petitioner in service with all services benefits including full back wages and further the services of the petitioner may kindly be ordered to be regularized as the petitioner has already completed more than six years' service with the respondent No. 1 and 2 Bank. Further the respondent Bank may be directed to pay the differential amount of wages *w.e.f.* 30-04-2011 to 28-2-2017 to the petitioner and may also be directed to pay the wages for the overtime and the duties performed by the petitioner with respondent No. 1 during the holidays with up-to-date interest. Respondents may also be burdened with the cost of litigation amounting to Rs. 50,000/- (fifty thousand) and respondent may also be directed to pay the damages amounting to Rs. 50,000/- for the harassment caused to the petitioner and his family members due to their illegal action."**

4. The lis was resisted and contested by respondents No. 1 & 2 by filing written reply wherein preliminary objections regarding maintainability, the respondent being an institution is bound to follow proper procedure before appointing employees, estoppel and the petitioner is challenging the process of selection after being declared unsuccessful.

5. On merits, it is submitted that the respondent Bank outsourced the work through respondent No. 3 as a temporary measure till regular appointments are being made. There was an agreement executed between the respondents. There is no employer employee relationship between the parties. The petitioner was not the employee of respondent Bank and as such he has been rightly terminated by the respondent No. 3. It is further submitted that the petitioner was appointed and deputed with the Bank by the contractor to serve with the Bank as per the conditions of the bank and since the contract with respondent No. 3 had not been renewed by the Bank, hence, the petitioner has no right to continue in the services of the Bank. Merely serving with the Bank does not entitle the petitioner for regular appointment in the Bank. The Bank being an institution is bound to adhere to the norms of selection before going for permanent employment. The respondent no.1 & 2 initiated and followed due procedure for recruitment and invited all eligible candidates to participate in the process. Further it is submitted that in pursuance to the contract, the contractor deputed manpower in the Bank and accordingly the respondent Bank had assigned duties, extracted work and also paid wages strictly as per the contract agreement. It is denied that the petitioner has not been paid for the work extracted. The petitioner has not been appointed by the respondent Bank as such there is no relationship of employer and employee exists and the provisions of the Act are not attracted in the instant case. The petitioner was employee of respondent no.3, as admitted by the petitioner himself. It is therefore prayed that in view of the facts and circumstances of the case the petitioner is not entitled for the relief as claimed and as such the petition may kindly be dismissed in the interest of justice.

6. By affording repeated opportunities, the respondent No. 3 has failed to file its reply, hence, *vide* order dated 11-11-2019, the right to file the reply on behalf of respondent No. 3 was closed.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondents No.1 & 2 and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination vide Court order dated 16.12.2019, as under:

1. Whether the termination of the petitioner w.e.f. 28.02.2017 is violative of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged? If so to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim is not maintainable as there is said to be no relationship of an employee and an employer with respondent's No.1 & 2, as alleged? If so, its effect thereto? . .*OPR.*

3. Whether the claim is not maintainable on account of act and conduct of the respondents as alleged? If so its effect thereto? . .*OPR.*

4. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes
Issue No. 2	No
Issue No. 3	No
Relief	Petition is allowed awarding reinstatement in service with seniority and continuity but without back-wages.

Reasons for findings

Issues No. 1 & 2 :

12. Both these issues are intermingled and inter connected, as mutually existent and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. To substantiate its case, the petitioner has examined as many as two witnesses in all. Shri Harish Thakur petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copy of experience certificate dated 27-03-2017 (PW-1/B), demand notice (PW-1/C), letter dated 03-07-2018 (PW-1/D).

14. In cross-examination on behalf of respondent No. 1 & 2, he denied that he was appointed by respondent No. 3. He feigned ignorance that the wages were paid to him by respondent No. 3 and EPF contribution was also made by respondent No. 3. He admitted that after advertisement of vacancy by the Bank for security-*cum*-night guard, he had applied for the same and he could not qualify the written test conducted by the Bank. Shri Hardeep Verma, Advocate for respondent No. 3, had adopted the cross-examination conducted on behalf of respondent No.1 & 2.

15. Shri Raj Kumar has appeared into the witness dock as (PW-2) to depose that he was working with the respondents Bank and the petitioner was also working with the Bank as night guard. He further deposed that the respondent Bank used to monitor their work and leaves were also sanctioned by the Bank.

16. In cross-examination on behalf of respondent No. 1 and 2, feigned ignorance that they were appointed by AP Securities Pvt. Ltd. He denied that the wages and EPF contribution was made to them by respondent No. 3. Shri Hardeep Verma, Advocate for respondent No. 3, had adopted the cross-examination conducted on behalf of respondent No.1 & 2.

17. In order to rebut, the respondent No. 1 & 2 has examined Shri Ajay Sharma, Manager of respondent Bank, who has appeared into the witness dock as (RW-1), and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence contracts (RW-1/B) and (RW-1/C), statement dated 09-01-2017 (RW-1/D) and statement Mark R-1.

18. In cross-examination, on behalf of the petitioner he admitted that the petitioner was working as peon-*cum*-night guard with the respondent Bank from 30-04-2011 and he worked till 28-02-2017. He further admitted that the petitioner had completed 240 working days in each calendar year. He feigned his ignorance that the petitioner was neither issued notice nor conducted any enquiry nor paid any compensation. He admitted that the petitioner was working for the Bank. He admitted that there is no registration of the bank under Contract Labour (Abolition & Regulation) Act. He volunteered that the Bank executed contract with AP Securities to engage the workers in 2007. Neither he can produce such contract nor it was annexed with the affidavit/reply and the contract (RW-1/B) was executed on 01-11-2013. He admitted to have issued the letter dated 27.03.2017 by the Bank. He admitted that the Bank engaged new persons after the termination of the petitioner. He denied that the salary to the petitioner was being paid by the Bank. When cross-examined on behalf of respondent no.3 he admitted that after the termination of the services of the petitioner they were asked to report back to respondent No. 3.

19. The respondent No. 2 has failed to lead any evidence in support of its case and closed the evidence on behalf of the respondent No. 3 as is evidence from the separate statement of Shri Hardeep Verma, Ld. Counsel for respondent No. 3.

20. This is the entire oral as well as documentary evidence adduced from the side of the parties.

21. Shri R. K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the services of the petitioner have been wrongly shown to be engaged through respondent No. 3, whereas his services have been engaged by respondents bank and the contract/agreement allegedly executed between the respondents is sham and camouflage just to defeat the provisions of the Act. The services of the petitioner have been illegally termianted by the respondent Bank without complying with the provisions of the Act especially when he had completed 240 working days in each and every calendar year. He further contended that the junior to the petitioner are still working with the respondent Bank which is against the mandatory provisions of sections 25-G and 25-H of the Act. It is therefore prayed that the claim filed by the petitioner may kindly be allowed.

22. *Per contra*, Shri Narender Verma, Ld. Counsel for the respondent No.1 (The Bhagat Bank) urged that the present claim petition is not maintainable as the services of the petitioner have been engaged through respondent no.3 as the respondent No.1 & 2 have outsourced the work to respondent No. 3, hence, the respondent Bank, in manner, is liable for the action taken by respondent No. 3 against the petitioner. He further argued that the respondent No. 3 was responsible for paying wages to the petitioner. Since, the petitioner is not the employee of respondent Bank and merely serving with the Bank, does not entitle the petitioner for regular appointment in the Bank. He also argued that the Bank being an institution is bound to adhere to the norms of selection before going for permanent employment. He argued that as the petitioner was an employee on fixed term employment as per the model standing order, and not a permanent employee so there is no relationship of employee and employer between them. It was also claimed that the petitioner was an employee of respondent No. 3 and he had been deployed with respondent Bank under the Contract Labour (Regulations and Abolition) Act, 1970. His services had never been terminated by respondent Bank, so it was not liable to reinstate the petitioner in service. It is therefore prayed that the claim petition may kindly be dismissed.

23. Shri Hardeep Verma, Ld. Counsel for respondent No. 3 has urged that the petitioner was appointed by respondent No. 3 and further deployed him with respondent Bank. The petitioner worked with the respondent Bank under the supervision and control of respondent No. 3. He again contended that it was engaged in the business of providing services in the area of human resource

management and consultancy services etc. to various organizations and there had been an agreement in between respondent Bank and respondent no.3 to provide workers, so the petitioner alongwith 555 other workers had been engaged. It was also it stand that the services of the petitioner had been hired on a fixed term of contract and this respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term appointment letter issued to him. He also prayed for the dismissal of the claim petition.

24. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

25. Thus, from a careful persual and meticulous examination of entire case record, it is crystal clear that the petitioner was initially engaged as peon-cum-night guard by respdonent Bank through respondent No. 3 and had worked as such continuously *w.e.f.* 30-04-2011 till 28-02-2017, as is admitted by Shri Ajay Sharma, Manager (RW-1). Some documents have been annexed by the respondent bank with the reply but no evidence has been led nor any functionary of the bank or the recruitment agency, has come on record to testify its veracity. There is nothing on record which could remotely suggest that in fact the services of the petitioner were engaged under the provisions of the Contract Labour (Abolition and Regulation) Act, 1970. Nowhere, it is pleaded or proved from the side of the respondent Bank that the said demand was apparently made on the basis of the proceedings of a committee for the engagement of labour etc. for the deployment of a Peon-cum-Night Guard in one of the branch of the respondent bank. Beyond this there is no evidence placed on record by the respondents. Even, if the same is taken into consideration, at best what could be inferred is that the respondent bank had sought the services of the petitioner along with the other workers/employees for the rendering of their services with the respondent bank as peon cum night guard that too *w.e.f.* 30-04-2011. Beyond that nothing has been placed on record by the respondent bank. On the other hand, the pleadings from the side of the respondent Bank are that the services of the petitioner have not been engaged by the Bank and there is no relationship of employer and employee exists between the petitioner and respondent Bank. The provisions of the Act are not attracted in the present case, hence, the petitioner is not entitled to take the benefits of the Act. It is submitted that the petitioner is the employee of respondent No. 3.

26. So far as concerning the contentions raised from the side of respondent Bank that the services of the petitioner have been engaged by respondent No. 3 and there was no control/ supervision over the working of the peittioner with respondent Bank. The respondent No. 3 was the controling and supervising authority to the work of the petitioner and the respondent No.3 was responsible for the compliance of all labour laws i.e. sanctionng of leave, depositing of PF etc.

27. That being so, all the contentions raised from the side of the respondents vis-a-vis the persual of entire case record coupled with ocular and documentary evidence on record, it is quite clear on the face of record that the petitioner was actually and factually under the direct control and supervision of the respondent Bank. Admitedly, the petitioner was working with the respondent Bank since 30-04-2011 and the agreement executed between the respondent Bank and respondent No.3, produced on record is dated 1-11-2013 *i.e.* much later from the initial engagement of the petitioner, hence, the contention raised from the side of the Bank that the petitioner was the employee of respondent No. 2, is hereby rejected.

28. Most importantly, the relationship of an employer and an employee is essentially a question of facts which is to be decided by the adjudicatory forum constituted under the Industrial Disputes Act taking in view the cumulative effect of the entire material produced before it. The evidence discussed hereinabove clearly shows that the petitioner has been continuously working under the control and supervision of the respondent Bank since the very inception of his

engagement. Admittedly, the petitioner had completed more than 240 days in each and every calendar year preceding his termination. The overwhelming evidence produced by the petitioner has gone un-rebutted. Based on the documents and the evidence submitted by the petitioner and for the lack of proper rebuttal to such documents, it has to be presumed that the workmen indeed was the employee of the respondent Bank and not the respondent No.3 contractor. The petitioner had admittedly been working uninterruptedly with the respondent Bank since from very inception. In this behalf support can ably be drawn from the judgment of **Hon'ble Supreme Court titled as Kanpur Electricity Supply Corporation Ltd. *Vs.* Shamim Mirza, 2009 LLR 226.**

29. It is thus more than clear that the petitioner was admittedly performing work of a permanent nature since long and that too under the direct supervision and control of the principle employer i.e. the respondent Bank. It is also more than clear that the petitioner was doing the same work and that too of a permanent nature as is being done by the employees engaged by the respondent Bank on permanent basis. It can thus be well inferred that the respondent Bank was indeed resorting to unfair labour practice, being in violation of entry 10 of the 5th schedule and the provisions of section 25-T. The petitioner has been continuously and regularly working with the respondent Bank since the year 2013, as is the case of the respondents. Admittedly, the petitioner was working continuously and uninterruptedly as casual employees for a long number of years, thus depriving him the status and privilege of a permanent employee. Moreover, nothing has been placed on record to show that the petitioner in fact was working with the contractor as is alleged.

30. In all fairness, by now it is equally established on the record that if a workman has worked continuously and uninterruptedly as a casual or temporary employee and the same is done with the object of depriving them the status and privilege of a permanent employee and they have been doing work of a permanent nature since long and that too under the direct supervision and control of the principle employer, regularization of the said employee is well justified and is even within the fore corners of law. Moreover, since it is conclusively proved on record that the respondent Bank has been resorting to unfair labour practice, more so, employing the petitioner as casually and temporarily for years together which is indeed violative of the provisions of Item 10 of Schedule 5, this Court can issue preventive as well as positive directions to undo the wrong. In this behalf support can be drawn from the recent judgments of the Hon'ble Supreme Court titled as **Umrala Gram Panchyat *Vs.* The Secretary Municipal Employees Union and Ors. 2015 LLR 449** and **Chennai Port Trust *Vs.* The Chennai Port Trust Industrial Employees Canteen Workers Welfare Association and Ors. 2018 LLR 612.**

31. For all the detailed reasons enumerated hereinabove, it is held that this Court has the jurisdiction to entertain the present petition as the petitioner is the employee of the respondent Bank and there does subsist a relationship of an employer and an employee between the parties. The petitioner has been performing work of a permanent nature since long under the direct supervision and control of the respondent Bank. The respondent Bank has been resorting to "unfair labour practice" in violation of entry 10 of the 5th Schedule of the Act.

32. Since, the respondent Bank has miserably failed to show that the petitioner was working under the control and supervision of the contractor, henceforth it could well and legitimately be presumed that the contention of the respondent bank was nothing but a subterfuge that the post of the peon-cum-night guard was being run by the contractor. After calling out the entire pleadings and the proof, the following mitigating, extenuating and prevailing facts and circumstances narrated here-in-below, which further strengthen as well showed that the overall supervision and the administrative control of the respondent bank, which are summarized as under:

(*i*) The Branch Manager/Managing Director having the overall supervision and control of the entire working of the petitioner who was shown to be engaged as peon-*cum*-chowkidar on contractual employment.

(*ii*) The Branch Manger/Managing Director fixing the duty hours or transferring chowkidars the services of the petitioner engaged/employed as peon-cum-night chowkidar.

(*iii*) The petitioner was engaged as peon-cum-night chowkidar, who was performing the task under the overall supervision and control of Respondent Bank.

(*iv*) The respondent bank had neither obtained or produced any registration certificate and the respondent security agency had not holding any license at the time of the engagement of the petitioner as per the requirement of The Contract Labour (Abolition and Regulation) Act,1970.

(*v*) The sanctioning of casual leave, station leave and the leave of any other kind due to the petitioners by the Branch Manager /Managing Director of the respondent bank.

(*vi*) The petitioner was allegedly so engaged on 30-04-2011 as evident from letters whereas the contract for engaging the services was executed between the respondents on 1-11-2013.

(*vii*) There being nothing produced or proved on record to remotely suggest that the salaries and the wages were being paid to the petitioners through the contractor.

33. The aforesaid circumstances clearly show that the petitioner was in fact working with the respondent Bank (The Bhagat Bank) and not the respondent No.3 contractor as is the case set-up by the respondent Bank.

34. As a sequel, it is directed that the petitioner shall be deemed to be the regular employees of the respondent Bank having been initially employed by the respondent Bank on 30-04-2011, whereas the contract/agreement was executed between the respondents on 1-11-2013. He shall be regularized on the completion of the requisite number of years counted from his initial engagements as per the policy of the State in vogue and as applicable to the respondent/Bank. He shall also be entitled to seniority and continuity in service.

35. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the Ld. Counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited *Vs.* Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals *Vs.* Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

36. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termiantion of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

"**16. When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim**."

37. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. All the issues are decided accordingly.

Issue No. 3 :

38. In order to prove this issue no specific evidence has been led by the respondents which could go to show that as to how the present petition is not maintainable on account of his act and conduct. The present petition has been filed by the petitioner under section 2-A of the Act, to which I find nothing wrong with claim petition. Therefore, keeping in view the detailed discussion under issue 3, I have no hesitation in holding that the present petition is perfectly maintainable in the present form. Thus, this issue is answered in favour of the petitioner and against the respondents.

Relief :

39. As a Sequent effect, from the discussion made herein above while discussing the above-mentioned issues, **the respondent Bank is directed to order the reinstatement/ reengagement of the services of the petitioner with continuity and seniority but without back-wages** and that the petitioner shall be deemed to be the regular employees of the respondent bank having been initially employed and engaged by the respondent bank from the date of his engagement. He shall be regularized on the completion of the requisite number of years counted from his initial engagement as per the policy of the State Government. He shall also be entitled to seniority and continuity but without any back-wages Parties are left behind to bear their own costs respectively.

40. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 8th day of August, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number	:	08 of 2019
Instituted on	:	19-02-2019

Decided on : 08-08-2022

Suresh Kumar s/o Shri Dila Ram, r/o Village Gadhon, PO Sabhathu, Tehsil & District Solan, HP. . .*Petitio*

Versus

1. The Managing Director, The Bhagat Urban Cooperative Bank Ltd., Solan, District Solan, H.P.

2. Branch Manager, The Bhagat Urban Cooperative Bank Ltd., Parwanoo, District Solan, H.P.

3. AP Securities (P) Ltd., SCO 23-24, 1st Floor Ambala High Way, Near Corporation Bank Zirakpur (Punjab). . .*Respondents.*

Claim petition under section 2-A of the Industrial Disputes Act

For the Petitioner : Shri R.K Khidtta, Adv.

For the Respondent No.1 &2 : Shri Narender Verma, Adv.

For the Respondent No. 3 : Shri Hardeep Verma, Adv.

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**) preferred on behalf of Shri Suresh Kumar (**hereinafter to be referred as the petitioner**) against the Managing Director, The Bhagat Urban Cooperative Bank Ltd. Solan (**hereinafter to be referred as the respondent No. 1**), The Branch Manager, The Bhagat Urban Cooperative Bank Ltd., Parwanoo, District Solan, H.P. **(hereinafter to be referred as respondent No. 2)** and AP Securities (P) Ltd. (**hereinafter to be referred as the respondent No. 3**), with the prayer to set aside the impugned oral dismissal order of the services of the petitioner *w.e.f.* 22-02-2017, passed by the respondents and further with direction to reinstate the services of the petitioner with all consequential service benefits including full back-wages and the services of the petitioner may kindly be regularized as the petitioner has already completed more than ten years' service with the respondents.

2. Material facts necessary for the disposal of the present petition as alleged by the petitioner in the statement of claim are thus that he was initially appointed as peon-cum-night guard under respondents Bank on 28-03-2008 and worked as such till May, 2012 continuously and thereafter the services of the petitioner have been terminated and the petitioner was again re-engaged by the respondents Bank *w.e.f.* 28-10-2012 as night guard and worked as such till 22-02-2017. The petitioner has been shown to be engaged through respondent No. 3 but in fact the petitioner was engaged by the respondents Bank. The attendance of the petitioner was verified and signed by respondent No. 2. The leave was sanctioned by the Manager of respondent No. 2 and the respondents Bank has also issued experience certificate in favour of the petitioner. The services of the petitioner have been illegally terminated by the respondents Bank *w.e.f.* 22-02-2017, without following the mandatory provisions of the Act. The petitioner has already completed 240 working days in each calendar year, hence, the impugned oral termination order passed by the respondents bank, is illegal, unjustified and against the principles of natural justice. It is averred that the respondent No. 2 had taken day and night duties from the petitioner, but full salary and over time

was not paid to him. It is further averred that the petitioner was the employee of the bank for all purposes and was not the employee of respondent Bank and the contract between the respondents was nothing but a camouflage to over care the intricacy of law. The respondent No. 3 has no role in the working of the petitioner as the work was taken by respondent No. 1.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the claim petition filed by the petitioner may kindly be allowed and the impugned oral dismissal of the services of the petitioner *w.e.f.* 22-2-2017, passed by the respondent No. 1 and 2 may kindly be quashed and set aside and the respondent No. 1 and 2 may kindly be directed to reinstate the petitioner in service with all services benefits including full back wages and further the services of the petitioner may kindly be ordered to be regularized as the petitioner has already completed more than ten years' service with the respondent no.1 and 2 Bank. Further the respondent Bank may be directed to pay the differential amount of wages *w.e.f.* 28-03-2008 to 22-2-2017 to the petitioner and may also be directed to pay the wages for the overtime and the duties performed by the petitioner with respondent No. 1 during the holidays with up-to-date interest. Respondents may also be burdened with the cost of litigation amounting to Rs. 50,000/- (fifty thousand) and respondent may also be directed to pay the damages amounting to Rs. 50,000/- for the harassment caused to the petitioner and his family members due to their illegal action."**

4. The lis was resisted and contested by respondents No.1 & 2 by filing written reply wherein preliminary objections regarding maintainability, the respondent being an institution is bound to follow proper procedure before appointing employees, estoppel and the petitioner is challenging the process of selection after being declared unsuccessful.

5. On merits, it is submitted that the respondent Bank outsourced the work through respondent No. 3 as a temporary measure till regular appointments are being made. There was an agreement executed between the respondents. There is no employer employee relationship between the parties. The petitioner was not the employee of respondent Bank and as such he has been rightly terminated by the respondent No.3. It is further submitted that the petitioner was appointed and deputed with the Bank by the contractor to serve with the Bank as per the conditions of the bank and since the contract with respondent No.3 had not been renewed by the Bank, hence, the petitioner has no right to continue in the services of the Bank. Merely serving with the Bank does not entitle the petitioner for regular appointment in the Bank. The Bank being an institution is bound to adhere to the norms of selection before going for permanent employment. The respondent No.1 & 2 initiated and followed due procedure for recruitment and invited all eligible candidates to participate in the process. Further it is submitted that in pursuance to the contract, the contractor deputed manpower in the Bank and accordingly the respondent Bank had assigned duties, extracted work and also paid wages strictly as per the contract agreement. It is denied that the petitioner has not been paid for the work extracted. The petitioner has not been appointed by the respondent Bank as such there is no relationship of employer and employee exists and the provisions of the Act are not attracted in the instant case. The petitioner was employee of respondent No. 3, as admitted by the petitioner himself. It is therefore prayed that in view of the facts and circumstances of the case the petitioner is not entitled for the relief as claimed and as such the petition may kindly be dismissed in the interest of justice.

6. By affording repeated opportunities, the respondent No.3 has failed to file its reply, hence, *vide* order dated 11-11-2019, the right to file the reply on behalf of respondent No. 3 was closed.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondents No.1 & 2 and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination vide Court order dated 16-12-2019, as under:

1. Whether the termination of the petitioner *w.e.f.* 22-02-2017 is violative of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged? If so to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim is not maintainable as there is said to be no relationship of an employee and an employer with respondent's No.1 & 2, as alleged? If so, its effect thereto? . .*OPR.*
3. Whether the claim is not maintainable on account of act and conduct of the respondents as alleged? If so its effect thereto? . .*OPR* .

4. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	No.
Issue No. 3	No.
Relief	Petition is allowed awarding reinstatement in service with seniority and continuity but without back-wages.

Reasons for findings

Issues No.1 & 2 :

12. Both these issues are intermingled and inter connected, as mutually existent and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. To substantiate its case, the petitioner has examined as many as two witnesses in all. Shri Suresh Kumar petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copy of experience certificates (PW-1/B), (PW-1/C), (PW-1/D), letters dated 30-12-2016 (PW-1/E), (PW-1/F), application (PW-1/G) and demand notice (PW-1/H).

14. In cross-examination on behalf of respondent No.1 & 2, he denied that he was appointed by respondent No. 3. He feigned ignorance that the wages were paid to him by

respondent No. 3 and EPF contribution was also made by respondent No.3. He admitted that after advertisement of vacancy by the Bank for security-*cum*-night guard, he had applied for the same and he could not qualify the written test conducted by the Bank. Shri Hardeep Verma, Advocate for respondent No. 3, had adopted the cross-examination conducted on behalf of respondent No.1 & 2.

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17. In order to rebut, the respondent No. 1 & 2 has examined Shri Ajay Sharma, Manager of respondent Bank, who has appeared into the witness dock as (RW-1), and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence contracts (RW-1/B) and (RW-1/C), statement dated 09-01-2017 (RW-1/D) and statement Mark R-1.

18. In cross-examination, on behalf of the petitioner he admitted that the petitioner was working as peon-*cum*-night guard with the respondent Bank from 28-03-2008 and he worked till 22-02-2017. He further admitted that the petitioner had completed 240 working days in each calendar year. He feigned his ignorance that the petitioner was neither issued notice nor conducted any enquiry nor paid any compensation. He admitted that the petitioner was working for the Bank. He admitted that there is no registration of the bank under Contract Labour (Abolition & Regulation) Act. He volunteered that the Bank executed contract with AP Securities to engage the workers in 2007. Neither he can produce such contract nor it was annexed with the affidavit/reply and the contract (RW-1/B) was executed on 01-11-2013. He admitted to have issued the letters dated 17-01-2012, 15-5-2012, 25-11-2013, 30-12-2016 and 30-12-2016, by the Bank. He admitted that the Bank engaged new persons after the termination of the petitioner. He denied that the salary to the petitioner was being paid by the Bank. When cross-examined on behalf of respondent no.3 he admitted that after the termination of the services of the petitioner they were asked to report back to respondent No. 3.

19. The respondent No. 2 has failed to lead any evidence in support of its case and closed the evidence on behalf of the respondent No. 3 as is evidence from the separate statement of Shri Hardeep Verma, Ld. Counsel for respondent No. 3.

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23. Shri Hardeep Verma, Ld. Counsel for respondent No. 3 has urged that the petitioner was appointed by respondent No. 3 and further deployed him with respondent Bank. The petitioner worked with the respondent Bank under the supervision and control of respondent No. 3. He again contended that it was engaged in the business of providing services in the area of human resource management and consultancy services etc. to various organizations and there had been an agreement in between respondent Bank and respondent No. 3 to provide workers, so the petitioner along-with 555 other workers had been engaged. It was also it stand that the services of the petitioner had been hired on a fixed term of contract and this respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term appointment letter issued to him. He also prayed for the dismissal of the claim petition.

24. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

25. Thus, from a careful persual and meticulous examination of entire case record, it is crystal clear that the petitioner was initially engaged as peon-*cum*-night guard by respondent Bank through respondent No. 3 and had worked as such continuously *w.e.f.* 28-03-2008 till 22-02-2017, as is admitted by Shri Ajay Sharma, Manager (RW-1). Some documents have been annexed by the respondent bank with the reply but no evidence has been led nor any functionary of the bank or the recruitment agency, has come on record to testify its veracity. There is nothing on record which could remotely suggest that in fact the services of the petitioner were engaged under the provisions of the Contract Labour (Abolition and Regulation) Act, 1970. Nowhere, it is pleaded or proved from the side of the respondent Bank that the said demand was apparently made on the basis of the proceedings of a committee for the engagement of labour etc. for the deployment of a Peon-*cum*-Night Guard in one of the branch of the respondent bank. Beyond this there is no evidence placed on record by the respondents. Even, if the same is taken into consideration, at best what could be inferred is that the respondent bank had sought the services of the petitioner along with the other workers/employees for the rendering of their services with the respondent bank as peon cum night guard that too *w.e.f.* 28-03-2008. Beyond that nothing has been placed on record by the respondent bank. On the other hand, the pleadings from the side of the respondent Bank are that the services of the petitioner have not been engaged by the Bank and there is no relationship of employer and employee exists between the petitioner and respondent Bank. The provisions of the Act are not attracted in the present case, hence, the petitioner is not entitled to take the benefits of the Act. It is submitted that the petitioner is the employee of respondent No. 3.

26. So far as concerning the contentions raised from the side of respondent Bank that the services of the petitioner have been engaged by respondent No. 3, and there was no control/ supervision over the working of the peittioner with respondent Bank. The respondent No. 3 was the controling and supervising authority to the work of the petitioner and the respondent No.3 was responsible for the compliance of all labour laws i.e sanctionng of leave, depositing of PF etc.

27. That being so, all the contentions raised from the side of the respondents vis-a-vis the persual of entire case record coupled with ocular and documentary evidence on record, it is quite clear on the face of record that the petitioner was actually and factually under the direct control and supervision of the respondent Bank. Admittedly, the petitioner was working with the respondent Bank since 28-03-2008 and the agreement executed between the respondent Bank and respondent No.3, produced on record is dated 1-11-2013 *i.e.* much later from the initial engagement of the petitioner, hence, the contention raised from the side of the Bank that the petitioner was the employee of respondent No. 2, is hereby rejected.

28. Most importantly, the relationship of an employer and an employee is essentially a question of facts which is to be decided by the adjudicatory forum constituted under the Industrial Disputes Act taking in view the cumulative effect of the entire material produced before it. The evidence discussed hereinabove clearly shows that the petitioner has been continuously working under the control and supervision of the respondent Bank since the very inception of his engagement. Admittedly, the petitioner had completed more than 240 days in each and every calendar year preceding his termination. The overwhelming evidence produced by the petitioner has gone un-rebutted. Based on the documents and the evidence submitted by the petitioner and for the lack of proper rebuttal to such documents, it has to be presumed that the workmen indeed was the employee of the respondent Bank and not the respondent No.3 contractor. The petitioner had admittedly been working uninterruptedly with the respondent Bank since from very inception. In this behalf support can ably be drawn from the judgment of **Hon'ble Supreme Court titled as Kanpur Electricity Supply Corporation Ltd. *Vs.* Shamim Mirza, 2009 LLR 226.**

29. It is thus more than clear that the petitioner was admittedly performing work of a permanent nature since long and that too under the direct supervision and control of the principle employer i.e. the respondent Bank. It is also more than clear that the petitioner was doing the same work and that too of a permanent nature as is being done by the employees engaged by the respondent Bank on permanent basis. It can thus be well inferred that the respondent Bank was indeed resorting to unfair labour practice, being in violation of entry 10 of the 5th schedule and the provisions of section 25-T. The petitioner has been continuously and regularly working with the respondent Bank since the year 2008, as is the case of the respondents. Admittedly, the petitioner was working continuously and uninterruptedly as casual employees for a long number of years, thus depriving him the status and privilege of a permanent employee. Moreover, nothing has been placed on record to show that the petitioner in fact was working with the contractor as is alleged.

30. In all fairness, by now it is equally established on the record that if a workman has worked continuously and uninterruptedly as a casual or temporary employee and the same is done with the object of depriving them the status and privilege of a permanent employee and they have been doing work of a permanent nature since long and that too under the direct supervision and control of the principle employer, regularization of the said employee is well justified and is even within the fore corners of law. Moreover, since it is conclusively proved on record that the respondent Bank has been resorting to unfair labour practice, more so, employing the petitioner as casually and temporarily for years together which is indeed violative of the provisions of Item 10 of Schedule 5, this Court can issue preventive as well as positive directions to undo the wrong. In this behalf support can be drawn from the recent judgments of the Hon'ble Supreme Court titled as **Umrala Gram Panchyat *Vs.* The Secretary Municipal Employees Union and Ors. 2015 LLR**

449 and **Chennai Port Trust Vs. The Chennai Port Trust Industrial Employees Canteen Workers Welfare Association and Ors. 2018 LLR 612.**

31. For all the detailed reasons enumerated hereinabove, it is held that this Court has the jurisdiction to entertain the present petition as the petitioner is the employee of the respondent Bank and there does subsist a relationship of an employer and an employee between the parties. The petitioner has been performing work of a permanent nature since long under the direct supervision and control of the respondent Bank. The respondent Bank has been resorting to "unfair labour practice" in violation of entry 10 of the 5th Schedule of the Act.

32. Since, the respondent Bank has miserably failed to show that the petitioner was working under the control and supervision of the contractor, henceforth it could well and legitimately be presumed that the contention of the respondent bank was nothing but a subterfuge that the post of the peon-cum-night guard was being run by the contractor. After calling out the entire pleadings and the proof, the following mitigating, extenuating and prevailing facts and circumstances narrated here-in-below, which further strengthen as well showed that the overall supervision and the administrative control of the respondent bank, which are summarized as under:

(*i*) The Branch Manager/Managing Director having the overall supervision and control of the entire working of the petitioner who was shown to be engaged as peon-*cum*-chowkidar on contractual employment.

(*ii*) The Branch Manger/Managing Director fixing the duty hours or transferring chowkidars the services of the petitioner engaged/employed as peon-cum-night chowkidar.

(*iii*) The petitioner was engaged as peon-*cum*-night chowkidar, who was performing the task under the overall supervision and control of Respondent Bank.

(*iv*) The respondent bank had neither obtained or produced any registration certificate and the respondent security agency had not holding any license at the time of the engagement of the petitioner as per the requirement of The Contract Labour (Abolition and Regulation) Act,1970.

(*v*) The sanctioning of casual leave, station leave and the leave of any other kind due to the petitioners by the Branch Manager /Managing Director of the respondent bank.

(*vi*) The petitioner was allegedly so engaged on 30-04-2011 as evident from letters whereas the contract for engaging the services was executed between the respondents on 1-11-2013.

(*vii*) There being nothing produced or proved on record to remotely suggest that the salaries and the wages were being paid to the petitioners through the contractor.

33. The aforesaid circumstances clearly show that the petitioner was in fact working with the respondent Bank (The Bhagat Bank) and not the respondent No. 3 contractor as is the case set-up by the respondent Bank.

34. As a sequel, it is directed that the petitioner shall be deemed to be the regular employees of the respondent Bank having been initially employed by the respondent Bank on 28-03-2008, whereas the contract/agreement was executed between the respondents on 1-11-2013. He shall be regularized on the completion of the requisite number of years counted from his initial

engagements as per the policy of the State in vogue and as applicable to the respondent/Bank. He shall also b entitled to seniority and continuity in service.

35. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the Ld. Counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited *Vs.* Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals *Vs.* Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

36. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another *Vs.* S.C Sharma** that :

> "**16. When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim**."

37. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. All the issues are decided accordingly.

Issue No.3.

38. In order to prove this issue no specific evidence has been led by the respondents which could go to show that as to how the present petition is not maintainable on account of his act and conduct. The present petition has been filed by the petitioner under section 2-A of the Act, to which I find nothing wrong with claim petition. Therefore, keeping in view the detailed discussion under issue 3, I have no hesitation in holding that the present petition is perfectly maintainable in the present form. Thus, this issue is answered in favour of the petitioner and against the respondents.

Relief :

39. As a Sequent effect, from the discussion made herein above while discussing the above-mentioned issues, **the respondent Bank is directed to order the reinstatement/ reengagement of the services of the petitioner with continuity and seniority but without back-wages** and that the petitioner shall be deemed to be the regular employees of the respondent bank having been initially employed and engaged by the respondent bank from the date of his engagement. He shall be regularized on the completion of the requisite number of years counted from his initial engagement as per the policy of the State Government. He shall also be entitled to

seniority and continuity but without any back-wages Parties are left behind to bear their own costs respectively.

40. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 8th day of August, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number : 83 of 2017

Instituted on : 23-08-2017

Decided on : 08-08-2022

Raj Kumar s/o Shri Amba Dutt Sharma, r/o Village Chamat Badech, PO Devthi, Tehsil and District Solan, H.P. . .*Petitioner.*

Versus

1. The Managing Director, The Bhagat Urban Cooperative Bank Ltd., Solan, District Solan, H.P.

2. AP Securities (P) Ltd., SCO 23-24, 1st Floor Ambala High Way, Near Corporation Bank Zirakpur (Punjab). . .*Respondents.*

Claim petition under section 2-A of the Industrial Disputes Act

For the Petitione : Shri R.K Khidtta, Adv.

For the Respondent No.1 : Shri Narender Verma, Adv.

For the Respondent No.2 : Shri Hardeep Verma, Adv.

AWARD

This is an usual claim petition instituted under section 2-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**) preferred on behalf of Shri Raj Kumar (**hereinafter to be referred as the petitioner**) against the Managing Director, The Bhagat Urban Cooperative Bank Ltd. Solan (**hereinafter to be referred as the respondent no.1**) and AP Securities (P) Ltd. (**hereinafter to be referred as the respondent no.2**), with the prayer to set aside the impugned

oral dismissal order of the services of the petitioner *w.e.f.* 08-02-2017, passed by the respondent and further with direction to reinstate the services of the petitioner with all consequential service benefits including full back-wages and the services of the petitioner may kindly be regularized as the petitioner has already completed more than ten years' service with the respondents.

2. Material facts necessary for the disposal of the present petition as alleged by the petitioner in the statement of claim are thus that he was initially appointed as peon-*cum*-night guard under respondent No. 1 through respondent No. 2 on 20-07-2007 and worked as such till 07-02-2017 continuously and thereafter the services of the petitioner have been terminated *w.e.f.* 08-02-2017. The petitioner has been shown to be engaged through respondent No. 2 but in fact the petitioner was engaged by the respondent No. 1. The attendance of the petitioner was verified and signed by respondent No. 1. The leave was sanctioned by the Manager of respondent No. 1 and the respondent No. 1 has also issued experience certificate in favour of the petitioner wherein he was admitted to be the employee of the respondent No. 1. The services of the petitioner have been illegally terminated by the respondent No. 1 *w.e.f.* 08-02-2017, without following the mandatory provisions of the Act. The petitioner has already completed 240 working days in each calendar year, hence, the impugned oral termination order passed by the respondent No. 1, is illegal, unjustified and against the principles of natural justice. It is further averred that the petitioner was the employee of the bank for all purposes and was not the employee of respondent No. 2 and the contract between the respondent No. 1 and 2 was nothing but a camouflage to over care the intricacy of law. The respondent No. 2 has no role in the working of the petitioner as the work was taken by respondent No. 1.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the claim petition filed by the petitioner may kindly be allowed and the impugned oral dismissal of the services of the petitioner *w.e.f.* 8-2-2017, passed by the respondent no.1 may kindly be quashed and set aside and the respondent no.1 may kindly be directed to reinstate the petitioner in service with all services benefits including full back wages and further the services of the petitioner may kindly be ordered to be regularized as the petitioner has already completed more than ten years' service with the respondent No. 1 Bank. Further the respondent Bank may be directed to pay the differential amount of wages *w.e.f.* 20-07-2007 to 7-2-2017 to the petitioner and may also be directed to pay the wages for the overtime and the duties performed by the petitioner with respondent No. 1 during the holidays with up-to-date interest. Respondents may also be burdened with the cost of litigation amounting to Rs. 30,000/- (thirty thousand) and respondent may also be directed to pay the damages amounting to Rs. 50000/- for the harassment caused to the petitioner and his family members due to their illegal action."**

4. The lis was resisted and contested by respondent No. 1 by filing written reply wherein preliminary objections regarding maintainability, the respondent being an institution is bound to follow proper procedure before appointing employees, estoppel and the petitioner is challenging the process of selection after being declared unsuccessful.

5. On merits, it is submitted that the respondent Bank outsourced the work through respondent No. 2 as a temporary measure till regular appointments are being made. There was an agreement executed between the respondents. There is no employer employee relationship between the parties. The petitioner was not the employee of respondent Bank and as such he has been rightly terminated by the respondent No. 2. It is further submitted that the petitioner was appointed and

deputed with the Bank by the contractor to serve with the Bank as per the conditions of the bank. Merely serving with the Bank does not entitle the petitioner for regular appointment in the Bank. The Bank being an institution is bound to adhere to the norms of selection before going for permanent employment. The respondent No.1 initiated and followed due procedure for recruitment and invited all eligible candidates to participate in the process. The petitioner had also participated who was declared unsuccessful. Further it is submitted that in pursuance to the contract, the contractor deputed manpower in the Bank and accordingly the respondent Bank had assigned duties, extracted work and also paid wages strictly as per the contract agreement. It is denied that the petitioner has not been paid for the work extracted. The petitioner has not been appointed by the respondent Bank as such there is no relationship of employer and employee exists and the provisions of the Act are not attracted in the instant case. The petitioner was employee of respondent No. 2, as admitted by the petitioner himself. It is therefore prayed that in view of the facts and circumstances of the case the petitioner is not entitled for the relief as claimed and as such the petition may kindly be dismissed in the interest of justice.

6. By filing separate reply, the respondent no.2 also contested the claim petition wherein preliminary objections qua jurisdiction, maintainability and not come to the Court with clean hands have been raised.

7. On merits, it is submitted that the petitioner was the employee of answering respondent as admitted by the petitioner himself. It is denied that the services of the petitioner have been terminated. It is submitted that there is no question of violation of the provisions of the Act as in pursuance of the agreement/contract, the respondent No. 2 has deputed manpower including the present petitioner with the respondent No. 1 (The Bhagat Bank). It is admitted that the petitioner had worked with the bank and the work/duties were taken by the bank. Rest of the contention of the petitioner were emphatically denied. It is therefore, prayed that the petition filed by the petitioner may kindly be dismissed with costs.

8. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondents and reaffirmed and reiterated those raised in the claim petition.

9. On elucidating the pleading of parties, the following issues were struck down by my Ld. Predecessor for its final determination *vide* Court order dated 03-08-2018, as under:

1. Whether the termination of the petitioner by the respondents *w.e.f.* 08-02-2017, without complying with the provisions of the Industrial Disputes Act, 1947, is illegal and unjustified? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petitioner was the employee of respondent no.2 as alleged? . .*OPR-1.*

4. Whether the claim petition is not maintainable as alleged? . .*OPRs.*

5. Relief

10. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

11. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

12. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes
Issue No. 2	Entitled to re-instatement in the employment of respondent No. 1, with seniority and continuity but without back-wages.
Issue No. 3	No
Issue No. 4	No
Relief.	Reference is allowed awarding reinstatement in service with seniority and continuity but without back-wages.

Reasons for findings

Issues No.1 to 3 :

13. Both these issues are intermingled and inter connected, as mutually existent and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

14. To substantiate its case, the petitioner has examined as many as six witnesses in all. Shri Raj Kumar petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copy of letter dated 23-07-2007 Mark P-1, experience certificate Mark P-2, letter dated 16-04-2009 Mark P-3, letter dated 04-12-2009 Mark P-4, letter dated 01-01-2010 Mark P-5, letter dated 27-02-2010 Mark P-6, letter dated 31-12-2010 Mark P-7, letter dated 28-01-2011 Mark P-8 and letter dated 12-04-2017 Mark P-9.

15. In cross-examination on behalf of respondent No.1, admitted that he had not annexed any appointment letter issued by the respondent No.1. He admitted that when the respondent No.1 had advertised the post of peon-cum-night guard, then he had also participated in the process. He denied that no junior to him was retained by the bank except those persons, who were appointed after following due process of selection. He admitted that he is working as an agriculturist and earning his livelihood. He denied that he was engaged by AP Securities and after the expiry of the contract between the Bank and AP securities, his services came to an end. When cross-examined on behalf of respondent No. 2, he denied that he was engaged by AP Securities with the bank. He further denied that his leaves were sanctioned by AP Securities. He denied that his services were terminated by AP Securities. He denied that his services were never terminated but he had been transferred to the other place of posting by AP Securities. He also denied that he was doing his duties by wearing the uniform of Security Guard.

16. Shri Suresh Kumar has appeared into the witness dock as (PW-2) to depose that he was working as peon-*cum*-night guard with the respondent No.1 Bank *w.e.f.* 28-3-2008 to May 2012 and he knows the petitioner. Both of them were under the supervision and control Bank. The Bank used to assign them the duties and sanction their leaves and he never seen any official in the bank deputed by the AP Securities. Their attendance was being verified by the Bank Manager and salary was being remitted in their Bank Account.

17. In cross-examination on behalf of respondent No.1, he admitted that he was engaged by AP Securities in the year 2008 and was deputed in the respondent No. 1 bank. He denied that his leaves were being sanctioned by the AP Securities. When cross-examined on behalf of respondent no.2 he feigned ignorance that his wages were being paid to him by AP Securities as per the contract with the Bank. He denied that his leaves were sanctioned by AP Securities.

18. (PW-3) Shri Harish Kumar has supported the entire version as deposed by PW-2, except that he was working as a peon-cum-nigh guard with the respondent no.1 Bank w.e.f. 30-04-2011 to March, 2013.

19. Shri Virender Singh while stepping into the witness box as (PW-4) has supported the entire version of (PW-2) and (PW-3) except that he was working as peon-cum-night guard with the respondent no.1 Bank w.e.f. October, 2008 to March, 2017.

20. Shri Nand Lal, Assistant General Manager of respondent No.1 Bank has appeared into the witness box as (PW-5) and proved on record letter dated 16-4-2009 (PW-5/A), letter dated 04-12-2009 (PW-5/B), letter dated 01-01-2010 (PW-5/C), letter dated 27-02-2010 (PW-5/D), letter dated 31-12-2010 (PW-5/E) and letter dated 28-1-2011 (PW-5/F) by stating that all the letters have been written by the Head Office to Branch Manager, Parwanoo.

21. In cross-examination on behalf of respondent No.1 he admitted that their Bank had entered into a contract with AP Securities for supply of manpower and AP Securities had deputed the workers with the bank. He further admitted that those workers were appointed by AP Securities and appointment letters were issued to them by AP Securities. He also admitted that the salary to those workers was being paid by AP Securities and their EPF etc. was also being deducted by AP Securities. He admitted that the services of those workers were never terminated by the Bank.

22. Shri Ajay Sharma, Senior Manager, Parwanoo Branch of respondent No. 1 has appeared into the witness dock as (PW-6) to depose that there was no permanent attendance register maintained by the Bank as the record of the attendance was sent to AP Securities in loose format. The attendance was marked by the petitioner himself. He further deposed that the petitioner has been working with the Bank since 2007 and he continued as such till Feb., 2017. The petitioner used to fill the dairy and dispatch register and cheque book entries were also made by the petitioner at times. He also deposed that expenditure, credit and debit vouchers have been filled by the petitioner. This witness has deposed that the one of the first saving account opening from in relation to SB account from 4801 to 4900 have been filled by the petitioner and there are other forms also which have been filled by him. He deposed that there are four class-IV posts in the Bank as to today (4-7-2019) and there might have been 2-3 of class IV in the year 2012-2013. The fresh appointment of class-IV have been done in the year 2017. The entire directions in relation to work were issued by the Bank and the attendance record was prepared by the Bank.

23. In cross-examination on behalf of respondents, he admitted that the Bank had entered into an agreement with AP Securities and the AP Securities selected the candidates and deployed them with the Bank. He further admitted that after the deployment, the leave of those employees were sanctioned by the AP Securities and wages were being paid to them by AP Securities. He admitted that when the regular posts were advertised by the Bank, the petitioner had also applied but he remained unsuccessful.

24. In order to rebut, the respondent No.1 Bank has examined Shri Ajay Sharma, Manager of respondent Bank, who has appeared into the witness dock as (RW-1), and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence contracts (RW-1/B) and (RW-1/C) statement dated 09-01-2017 (RW-1/D) and statement Mark R-1.

25. In cross-examination, on behalf of the petitioner he admitted that the petitioner was working as peon-cum-night guard with the respondent Bank from 20-07-2007 and he worked till 08-02-2017. He further admitted that the petitioner had completed 240 working days in each calendar year. He feigned his ignorance that the petitioner was neither issued notice nor conducted any enquiry nor paid any compensation. He admitted that there is no registration of the bank under Contract Labour (Abolition & Regulation) Act. He volunteered that the Bank executed contract with AP Securities to engage the workers in 2007. Neither he can produce such contract nor it was annexed with the affidavit/reply and the contract (RW-1/B) was executed on 01-11-2013. He admitted to have issued the letters dated 23-7-2007, 16-04-2009, 04-12-2009, 01-01-2010, 27-02-2010, 31-12-2010 and 28-11-2011 by the Bank. He admitted that the Bank engaged new persons after the termination of the petitioner. He denied that the salary to the petitioner was being paid by the Bank. When cross-examined on behalf of respondent No. 2 he admitted that after the termination of the services of the petitioner they were asked to report back to respondent No. 2.

26. The respondent No. 2 has failed to lead any evidence in support of its case and closed the evidence on behalf of the respondent No. 2 as is evidence from the separate statement of Shri Hardeep Verma, Ld. Counsel for respondent No. 2.

27. This is the entire oral as well as documentary evidence adduced from the side of the parties.

28. Shri R.K Khidtta, Learned counsel for the petitioner has contended with all vehemence that the services of the petitioner have been wrongly shown to be engaged through respondent No. 2, whereas his services have been engaged by respondent No. 1 and the contract/agreement allegedly executed between the respondents is sham and camouflage just to defeat the provisions of the Act. The services of the petitioner have been illegally terminated by the respondent No.1 without complying with the provisions of the Act especially when he had completed 240 working days in each and every calendar year. He further contended that the junior to the petitioner are still working with the respondent Bank which is agaisnt the mandatory provisions of sections 25-G and 25-H of the Act. It is therefore prayed that the claim filed by the petitioner may kindly be allowed.

29. *Per contra*, Shri Narender Verma, Ld. Counsel for the respondent No.1 (The Bhagat Bank) urged that the the present claim petition is not maintainable as the services of the petitioner have been engaged through respondent No. 2 as the respondent No. 1 has outsourced the work to respondent No. 2, hence, the respondent No. 1, in manner, is liable for the action taken by respondent No. 2 against the petitioner. He further argued that the respondent No. 2 was responsible for paying wages to the petitioner. Since, the petitioner is not the employee of respondent No. 1 and merely serving with the Bank, does not entitle the petitioner for regular appointment in the Bank. He also argued that the Bank being an institution is bound to adhere to the norms of selection before going for permanent employment. He argued that as the petitioner was an employee on fixed term employment as per the model standing order, and not a permanent employee so there is no relationship of employee and employer between them. It was also claimed that the petitioner was an employee of respondent No. 2 and he had been deployed with respondent No. 1 under the Contract Labour (Regulations and Abolition) Act, 1970. His services had never been terminated by respondent No. 1, so it was not liable to reinstate the petitioner in service. It is therefore prayed that the claim petition may kindly be dismissed.

30. Shri Hardeep Verma, Ld. Counsel for respondent No. 2 has urged that the petitioner was appointed by respondent No. 2 and further deployed him with respondent No. 1. The petitioner worked with the respondent Bank under the supervision and control of respondent No. 2. He again contended by that it was engaged in the business of providing services in the area of human resource management and consultancy services etc. to various organizations and there had been an

agreement in between respondent No. 1 and respondent No. 2 to provide workers, so the petitioner along-with 555 other workers had been engaged. It was also it stand that the services of the petitioner had been hired on a fixed term of contract and this respondent had duly issued termination/work completion letter, in tune with the terms and conditions of the fixed term appointment letter issued to him He also prayed for the dismissal of the claim petition.

31. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

32. Thus, from a careful persual and meticulous examination of entire case record, it is crystal clear that the petitioner was initially engaged as peon-cum-night guard by respondent No. 1 through respondent No. 2 and had worked as such continuously *w.e.f.* 20-07-2007 till 08-02-2017, as is abundantly clear from the communication issued by the respondent bank vide letters (PW-5/A) to (PW-5/E). Some documents have been annexed by the respondent bank with the reply but no evidence has been led nor any functionary of the bank or the recruitment agency has come on record to testify its veracity. The documents show that somewhere in the year 2007, precisely on 20-07-2007 the services of the petitioner has been engaged through the contractors, however, there is nothing on the record remotely to suggest that the petitioner had ever asked the contractor to engage the service of the petitioner or any other worker under the provisions of the Contract Labour (Abolition and Regulation) Act, 1970. Nowhere it is pleaded or proved from the side of the respondent Bank that the said demand was apparently made on the basis of the proceedings of a committee for the engagement of labour etc. for the deployment of a Peon-*cum*-Night Guard in one of the branch of the respondent bank. Beyond this there is no evidence placed on record by the respondents. Even, if the same is taken into consideration, at best what could be inferred is that the respondent bank had sought the services of the petitioner along with the other workers/employees for the rendering of their services with the respondent bank as peon cum night guard that too in the year 2007. Beyond that nothing has been placed on record by the respondent bank. On the other hand, the pleadings from the side of the respondent No.1 are that the services of the petitioner have not been engaged by the Bank and there is no relationship of employer and employee exists between the petitioner and respondent Bank. The provisions of the Act are not attracted in the present case, hence, the petitioner is not entitled to take the benefits of the Act. It is submitted that the petitioner is the employee of respondent No. 2. However, it is pleaded from the side of respondent No. 2 that the services of the petitioner have not been termianted by answering respondent. The entire case set up by the respondent No. 2 has been half heartedly admitted by the respondent No. 1. Here, it is relevant to reproduce paras 2, 4 and 6 to 9 of the reply filed by respondent No. 2, for the sake of convienence which reads as under:—

"2. That the contents of this para No. 2 are matters of record hence do not need any reply.

4. That the contents of this para no.4 are matter of record hence do not need any reply.

6. That the contents of this para are matter of record and need to be put strick proof of the allegation, rest of the contents of this para are denied for want of knowledge.

7. That the contents of this para are matter of record hence denied for want of knowledge.

8. That the contents of this para are matter of record hence denied for want of knowledge.

9. That the contents of this para are denied for want of knowledge hence calls for no reply."

33. So far as concerning the contentions raised from the side of respondent No. 1 that the services of the petitioner have been engaged by respondent No. 2 and there was no control/ supervision over the working of the peittioner with respondent No.1. The respondent No. 2 was the controling and supervising authority to the work of the petitioner and the respondent No. 2 was responsible for the compliance of all labour laws *i.e.* sanctionng of leave, depositing of PF etc.

34. That being so, all the contentions raised from the side of the respondents vis-a-vis the persual of entire case record coupled with ocular and documentary evidence on record, it is quite clear on the face of record that the petitioner was actually and factually under the direct control and supervision of the respondent Bank. Admitedly, the petitioner was working with the respondent Bank since 07-02-2007 and the agreement executed detween the respondent No.1 and 2 produced on record is pertaining to the year 2013 i.e. much later from the initial engagement of the petitioner, hence, the contention raised from the side of the Bank that the petitioner was the employee of respondent No.2, is hereby rejected.

35. Most importantly, the relationship of an employer and an employee is essentially a question of facts which is to be decided by the adjudicatory forum constituted under the Industrial Disputes Act taking in view the cumulative effect of the entire material produced before it. The evidence discussed hereinabove clearly shows that the petitioner has been continuously working under the control and supervision of the respondent Bank since the very inception of his engagement. Admittedly, the petitioner had completed more than 240 days in each and every calendar year preceding his termination. The overwhelming evidence produced by the petitioner has gone un-rebutted. Based on the documents and the evidence submitted by the petitioner and for the lack of proper rebuttal to such documents it has to be presumed that the workmen indeed were the employees of the respondent No.1 and not the respondent No. 2 contractor. The petitioner had admittedly been working uninterruptedly with the respondent No. 1 since from very inception. In this behalf support can ably be drawn from the judgment of **Hon'ble Supreme Court titled as Kanpur Electricity Supply Corporation Ltd. *Vs.* Shamim Mirza, 2009 LLR 226.**

36. It is thus more than clear that the petitioner was admittedly performing work of a permanent nature since long and that too under the direct supervision and control of the principle employer i.e. the respondent No.1. It is also more than clear that the petitioner was doing the same work and that too of a permanent nature as is being done by the employees engaged by the respondent Bank on permanent basis. It can thus be well inferred that the respondent Bank was indeed resorting to unfair labour practice, being in violation of entry 10 of the 5th schedule and the provisions of section 25-T. The petitioner has been continuously and regularly working with the respondent Bank since the year 2007, as is the case of the respondents. Admittedly, the petitioner was working continuously and uninterruptedly as casual employees for a long number of years, thus depriving him the status and privilege of a permanent employee. Moreover, nothing has been placed on record to show that the petitioner in fact was working with the contractor as is alleged.

37. In all fairness, by now it is equally established on the record that if a workman has worked continuously and uninterruptedly as a casual or temporary employee and the same is done with the object of depriving them the status and privilege of a permanent employee and they have been doing work of a permanent nature since long and that too under the direct supervision and control of the principle employer, regularization of the said employee is well justified and is even within the fore corners of law. Moreover, since it is conclusively proved on record that the respondent No.1 has been resorting to unfair labour practice, more so, employing the petitioner as casually and temporarily for years together which is indeed violative of the provisions of Item 10 of Schedule 5, this Court can issue preventive as well as positive directions to undo the wrong. In this behalf support can be drawn from the recent judgments of the Hon'ble Supreme Court titled as **Umrala Gram Panchyat *Vs.* The Secretary Municipal Employees Union and Ors. 2015 LLR**

449 and **Chennai Port Trust *Vs.* The Chennai Port Trust Industrial Employees Canteen Workers Welfare Association and Ors. 2018 LLR 612.**

38. For all the detailed reasons enumerated hereinabove, it is held that this Court has the jurisdiction to entertain the present petition as the petitioner is the employee of the respondent Bank and there does subsist a relationship of an employer and an employee between the parties. The petitioner has been performing work of a permanent nature since long under the direct supervision and control of the respondent Bank. The respondent No.1 has been resorting to "unfair labour practice" in violation of entry 10 of the 5th Schedule of the Act.

39. Since, the respondent Bank has miserably failed to show that the petitioner was working under the control and supervision of the contractor, henceforth it could well and legitimately be presumed that the contention of the respondent bank was nothing but a subterfuge that the post of the peon-cum-night guard was being run by the contractor. After calling out the entire pleadings and the proof, the following mitigating, extenuating and prevailing facts and circumstances narrated here-in-below, which further strengthen as well showed that the overall supervision and the administrative control of the respondent bank, which are summarized as under:

(*i*) The Branch Manager/Managing Director having the overall supervision and control of the entire working of the petitioner who was shown to be engaged as peon-*cum*-chowkidar on contractual employment as is clear from (PW-5/A) and (PW-5/E).

(*ii*) The Branch Manger/Managing Director fixing the duty hours or transferring chowkidarg the services of the petitioner engaged/employed as peon-cum-night chowkidar.

(*iii*) The petitioner was engaged as peon-*cum*-night chowkidar, who was performing the task under the overall supervision and control of Respondent Bank.

(*iv*) The respondent bank had neither obtained or produced any registration certificate and the respondent security agency had not holding any license at the time of the engagement of the petitioner as per the requirement of The Contract Labour (Abolition and Regulation) Act,1970.

(*v*) The sanctioning of casual leave, station leave and the leave of any other kind due to the petitioners by the Branch Manager /Managing Director of the respondent bank.

(*vi*) The petitioners were allegedly so engaged on 20-07-2007 as evident from letters whereas the contract for engaging the services was executed between the respondents on 1-11-2013.

(*vii*) There being nothing produced or proved on record to remotely suggest that the salaries and the wages were being paid to the petitioners through the contractor.

40. The aforesaid circumstances clearly show that the petitioner was in fact working with the respondent No.1 (The Bhagat Bank) and not the respondent No.2 contractor as is the case set-up by the respondent No.1.

41. As a sequel, it is directed that the petitioner shall be deemed to be the regular employees of the respondent Bank having been initially employed by the respondent Bank in the year 2007, whereas the contract/agreement was executed between the respondents in the year 2013. He shall be regularized on the completion of the requisite number of years counted from his initial

engagements as per the policy of the State in vogue and as applicable to the respondent/Bank. He shall also be entitled to seniority and continuity in service.

42. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the Ld. Counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited *Vs.* Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

43. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termiantion of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that:

> "**16. When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim**."

44. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his termination. Moreover, the petitioner himself has admitted in his cross-examination that he is also working as an agriculturist and earning his livelihood from there. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. All the issues are decided accordingly.

Issue No.4:

45. In order to prove this issue no specific evidence has been led by the respondents which could go to show that as to how the present petition is not maintainable. The present petition has been filed by the petitioner under section 2-A of the Act, to which I find nothing wrong with claim petition. Therefore, keeping in view the detailed discussion under issues No. 1 to 3, I have no hesitation in holding that the present petition is perfectly maintainable in the present form. Thus, this issue is answered in favour of the petitioner and against the respondent.

Relief :

46. As a Sequent effect, from the discussion made hereinabove while discussing the above-mentioned issues, **the respondent Bank is directed to order the reinstatement/ reengagement of the services of the petitioner with continuity and seniority but without back-wages** and that the petitioner shall be deemed to be the regular employees of the respondent bank having been initially employed and engaged by the respondent bank from the date of his engagement. He shall be regularized on the completion of the requisite number of years counted from his initial engagement as per the policy of the State Government. He shall also be entitled to

seniority and continuity but without any back-wages Parties are left behind to bear their own costs respectively.

47. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 8th day of August, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 310 of 2020

Instituted on : 26-11-2020

Decided on : 8-8-2022

Mangal Sain s/o Late Shri Raghu Dass, r/o Village Majhewali (Kyari), P.O. Majhewali, Tehsil Rampur Bushehr, District Shimla, H.P.

Versus

The Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, HP. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent: Ms. Ranjeeta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 13-11-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of services of Shri Mangal Sain s/o Late Shri Raghu Dass, r/o Village Majhewali (Kyari), P.O Majhewali, Tehsil Rampur Bushehr, District Shimla, HP by the Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. *w.e.f.* 30-9-2019 after the payment of full & final dues amounting to Rs. 1,21,201/- only,**

is legal and justified? If not, what relief including reinstatement, and other service benefits the aggrieved workman is entitled to? and if yes, what are its effects?"

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 310 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of the parties since 26-11-2020, but none had appeared till 25-10-2021, on which date Shri Prateek Kumar, Advocate had appeared for petitioner whereas Shri B.R. Kashyap, Advocate had appeared for respondent on 2-7-2022, again none had appeared for petitioner before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. Moreover, from the reference notification dated 13-11-2020, it is clear that the petitioner has taken his full & final dues amounting to Rs. 1,21,201/- from the respondent which also seems that the petitioner is not interested to pursue this reference petition by filing statement of claim.

4. Such being the situation, now, I am left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

5. As per the reference received from the appropriate government, the petitioner has alleged his termination *w.e.f.* 30-9-2019 to be illegal and unjustified after the payment of full and final dues amounting to Rs. 1,21,201/- but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent after taking full & final dues, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence i.e. oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

6. File, after completion, be consigned to record room.

Announced:
8-8-2022

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

BEFORE SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 312 of 2020

Instituted on : 18-12-2020

Decided on : 8-8-2022

Dharmender Singh s/o Shri Krishan Bhagat, r/o Village Rattanpur, PO Kartot, Tehsil Rampur Bushehr, District Shimla, HP. . .*Petitioner.*

Versus

The Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent: Ms.Ranjeeta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26-11-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of services of Shri Dharmender Singh, s/o Shri Krishan Bhagat, r/o Village Rattanpur, P.O. Kartot, Tehsil Rampur Bushehr, District Shimla, HP by the Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. *w.e.f.* 30-9-2019 after the payment of full & final dues amounting to Rs. 1,04,888/- only, is legal and justified? If not, what relief including reinstatement, and other service benefits the aggrieved workman is entitled to? and if yes, what are its effects**?"

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 312 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of the parties since 18-12-2020, but none had appeared till 25-10-2021, on which date Shri Prateek Kumar, Advocate had appeared for petitioner whereas Shri B. R. Kashyap, Advocate had appeared for respondent on 2-7-2022, again none had appeared for petitioner, before this tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. Moreover, from the reference notification dated 26-11-2020, it is clear that the petitioner has taken his full & final dues amounting to Rs. 1,04,888/- from the respondent which also seems that the petitioner is not interested to pursue this reference petition by filing statement of claim.

4. Such being the situation, now, I am left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

5. As per the reference received from the appropriate government, the petitioner has alleged his termination *w.e.f.* 30-9-2019 to be illegal and unjustified after the payment of full and final dues amounting to Rs. 1,04,888/-but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent after taking full & final dues, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence i.e. oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

6. File, after completion, be consigned to record room.

Announced:
8-8-2022

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

BEFORE SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 315 of 2020

Instituted on : 18-12-2020

Decided on : 8-8-2022

Manmohan Singh s/o Shri Jeet Singh, r/o Village Rattanpur, P.O. Kartot, Tehsil Rampur Bushehr, District Shimla, HP. . .*Petitioner* .

Versus

The Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner: Nemo

For the Respondent: Ms. Ranjeeta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26-11-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of services of Shri Manmohan Singh s/o Shri Jeet Singh, r/o Village Rattanpur, P.O. Kartot, Tehsil Rampur Bushehr, District Shimla, H.P. by the Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. *w.e.f.* 30-9-2019 after the payment of full & final dues amounting to Rs. 1,10,513/- only, is legal and justified? If not, what relief including reinstatement, and other service benefits the aggrieved workman is entitled to? and if yes, what are its effects**?"

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 314 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of the parties since 18-12-2020, but none had appeared till 25-10-2021, on which date Shri Prateek Kumar, Advocate had appeared for petitioner whereas Shri B.R Kashyap, Advocate had appeared for respondent on 2-7-2022, again none had appeared for petitioner before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. Moreover, from the reference notification dated 26-11-2020, it is clear that the petitioner has taken his full & final dues amounting to Rs. 1,10,513/- from the respondent which also seems that the petitioner is not interested to pursue this reference petition by filing statement of claim.

4. Such being the situation, now, I am left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

5. As per the reference received from the appropriate government, the petitioner has alleged his termination *w.e.f.* 30-9-2019 to be illegal and unjustified after the payment of full and final dues amounting to Rs. 1,10,513/-but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent after taking full & final dues, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence i.e. oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

6. File, after completion, be consigned to record room.

Announced:
8.8.2022

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

BEFORE SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 315 of 2020

Instituted on : 18-12-2020

Decided on : 8-8-2022

Joginder Singh s/o Shri Him Singh, r/o Village Rattanpur, P.O. Kartot, Tehsil Rampur Bushehr, District Shimla, H.P. . .*Petitioner.*

Versus

The Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, HP. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner: Nemo

For the Respondent: Ms. Ranjeeta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 26-11-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of services of Shri Joginder Singh s/o Shri Him Singh, r/o Village Rattanpur, P.O. Kartot, Tehsil Rampur Bushehr, District Shimla, H.P. by the Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. *w.e.f.* 30-9-2019 after the payment of full & final dues amounting to Rs. 1,09,759/- only, is legal and justified? If not, what relief including reinstatement, and other service benefits the aggrieved workman is entitled to? and if yes, what are its effects**?"

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 315 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of the parties since 18-12-2020,

but none had appeared till 25-10-2021, on which date Shri Prateek Kumar, Advocate had appeared for petitioner whereas Shri B.R. Kashyap, Advocate had appeared for respondent on 2-7-2022, again none had appared for petitioner before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. Moreover, from the reference notification dated 26-11-2020, it is clear that the petitioner has taken his full & final dues amounting to Rs. 1,09,759/- from the respondent which also seems that the petitioner is not interested to pursue this reference petition by filing statement of claim.

4. Such being the situation, now, I am left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

5. As per the reference received from the appropriate government, the petitioner has alleged his termination *w.e.f.* 30-9-2019 to be illegal and unjustified after the payment of full and final dues amounting to Rs. 1,09,759/-but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent after taking full & final dues, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence i.e. oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

6. File, after completion, be consigned to record room.

Announced:
8-8-2022

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

BEFORE SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number	: 316 of 2020
Instituted on	: 18-12-2020
Decided on	: 8-8-2022

AjeshiNegi s/o Shri Sanam Dev Negi, r/o Village Rattanpur, P.O. Kartot, Tehsil Rampur Bushehr, District Shimla, H.P. . .*Petitioner*.

Versus

The Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, HP. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For the Petitioner: Nemo

For the Respondent: Ms. Ranjeeta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26-11-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of services of Shri Ajeshi Negi s/o Shri Sanam Dev Negi, r/o Village Rattanpur, P.O. Kartot, Tehsil Rampur Bushehr, District Shimla, H.P. by the Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. *w.e.f.* 30-9-2019 after the payment of full & final dues amounting to Rs. 1,43,473/- only, is legal and justified? If not, what relief including reinstatement, and other service benefits the aggrieved workman is entitled to? and if yes, what are its effects**?"

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 316 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of the parties since 18-12-2020, but none had appeared till 25-10-2021, on which date Shri Prateek Kumar, Advocate had appeared for petitioner whereas Shri B. R. Kashyap, Advocate had appeared for respondent on 2-7-2022, again none had appeared for petitioner before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. Moreover, from the reference notification dated 26-11-2020, it is clear that the petitioner has taken his full & final dues amounting to Rs. 1,43,473/- from the respondent which also seems that the petitioner is not interested to pursue this reference petition by filing statement of claim.

4. Such being the situation, now, I am left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

5. As per the reference received from the appropriate government, the petitioner has alleged his termination *w.e.f.* 30-9-2019 to be illegal and unjustified after the payment of full and final dues amounting to Rs. 1,43,473/-but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear

before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent after taking full & final dues, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence i.e. oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

6. File, after completion, be consigned to record room.

Announced:
8-8-2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

BEFORE SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 317 of 2020

Instituted on : 18-12-2020

Decided on : 8-8-2022

Mohan Singh s/o Shri Karam Singh r/o Village Rattanpur, P.O. Kartot, Tehsil Rampur Bushehr, District Shimla, H.P. . .*Petitioner.*

Versus

The Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, HP. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner: Nemo

For the Respondent: Ms.Ranjeeta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 26-11-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of services of Shri Mohan Singh s/o Shri Karam Singh, r/o Village Rattanpur, P.O. Kartot, Tehsil Rampur Bushehr, District Shimla, H.P. by the Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. *w.e.f.* 30-9-2019 after the payment of full & final dues amounting to Rs. 1,39,462/- only, is legal and justified? If not, what relief including reinstatement, and other service benefits the aggrieved workman is entitled to? and if yes, what are its effects**?"

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 317 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of the parties since 18-12-2020, but none had appeared till 25-10-2021, on which date Shri Prateek Kumar, Advocate had appeared for petitioner whereas Shri B.R Kashyap, Advocate had appeared for respondent on 2-7-2022, again none had appeared for petitioner before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. Moreover, from the reference notification dated 26-11-2020, it is clear that the petitioner has taken his full & final dues amounting to Rs. 1,39,462/- from the respondent which also seems that the petitioner is not interested to pursue this reference petition by filing statement of claim.

4. Such being the situation, now, I am left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

5. As per the reference received from the appropriate government, the petitioner has alleged his termination *w.e.f.* 30-9-2019 to be illegal and unjustified after the payment of full and final dues amounting to Rs. 1,39,462/-but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent after taking full & final dues, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence *i.e.* oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

6. File, after completion, be consigned to record room.

Announced:
8-8-2022

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

BEFORE SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 318 of 2020

Instituted on : 18-12-2020

Decided on : 8-8-2022

Mohan Singh s/o Shri Kandu Ram, r/o Village Kyari, P.O. Majhewali, Tehsil Rampur Bushehr, District Shimla, H.P. . .*Petitioner*.

Versus

The Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent: Ms. Ranjeeta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 26-11-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of services of Shri Mohan Singh s/o Shri Kandu Ram, r/o Village Kyari, P.O. Majhewali, Tehsil Rampur Bushehr, District Shimla, H.P. by the Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. *w.e.f.* 30-9-2019 after the payment of full & final dues amounting to Rs. 1,13,470/- only, is legal and justified? If not, what relief including reinstatement, and other service benefits the aggrieved workman is entitled to? and if yes, what are its effects**?"

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 318 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of the parties since 18-12-2020, but none had appeared till 25-10-2021, on which date Shri Prateek Kumar, Advocate had appeared for petitioner whereas Shri B. R. Kashyap, Advocate had appeared for respondent on 2-7-2022, again none had appeared for petitioner before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. Moreover, from the reference notification dated 26-11-2020, it is clear that the petitioner has taken his full & final dues amounting to Rs. 1,13,470/-

from the respondent which also seems that the petitioner is not interested to pursue this reference petition by filing statement of claim.

4. Such being the situation, now, I am left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

5. As per the reference received from the appropriate government, the petitioner has alleged his termination *w.e.f.* 30-9-2019 to be illegal and unjustified after the payment of full and final dues amounting to Rs. 1,13,470/-but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent after taking full & final dues, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence i.e. oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

6. File, after completion, be consigned to record room.

Announced:
8-8-2022

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

BEFORE SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 319 of 2020

Instituted on : 18-12-2020

Decided on : 8-8-2022

Vinod Kumar s/o Shri Amar Dass, r/o Village Koshgar, P.O. Majhewali, Tehsil Rampur Bushehr, District Shimla, H.P. . .*Petitioner.*

Versus

The Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner: Nemo

For the Respondent: Ms. Ranjeeta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 26-11-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of services of Shri Vinod Kumar s/o Shri Amar Dass, r/o Village Koshgar, P.O. Majhewali, Tehsil Rampur Bushehr, District Shimla, HP by the Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. *w.e.f.* 30-9-2019 after the payment of full & final dues amounting to Rs. 1,30,336/- only, is legal and justified? If not, what relief including reinstatement, and other service benefits the aggrieved workman is entitled to? and if yes, what are its effects**?"

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 319 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of the parties since 18-12-2020, but none had appeared till 25-10-2021, on which date Shri Prateek Kumar, Advocate had appeared for petitioner whereas Shri B.R Kashyap, Advocate had appeared for respondent on 2-7-2022, again none had appeared for petitioner before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. Moreover, from the reference notification dated 26-11-2020, it is clear that the petitioner has taken his full & final dues amounting to Rs. 1,30,336/- from the respondent which also seems that the petitioner is not interested to pursue this reference petition by filing statement of claim.

4. Such being the situation, now, I am left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

5. As per the reference received from the appropriate government, the petitioner has alleged his termination *w.e.f.* 30-9-2019 to be illegal and unjustified after the payment of full and final dues amounting to Rs. 1,30,336/-but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent after taking full & final dues, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence *i.e.* oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in

appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

6. File, after completion, be consigned to record room.

Announced:
8-8-2022

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

BEFORE SH. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 320 of 2020

Instituted on : 26-11-2020

Decided on : 8-8-2022

Mohar Singh s/o Shri Rattan Singh, r/o Village Rattanpur, P.O. Kartot, Tehsil Rampur Bushehr, District Shimla, H.P. . .*Petitioner.*

Versus

The Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, H.P. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent: Ms. Ranjeeta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 26-11-2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of services of Shri Mohar Singh s/o Shri Rattan Singh, r/o Village Rattanpur, P.O. Kartot, Tehsil Rampur Bushehr, District Shimla, H.P. by the Manager M/s Technology House (India) Pvt. Ltd., (Jeori Hydro Electric Project) located at Village Rattanpur, Tehsil Rampur Bushehr, District Shimla, HP *w.e.f.* 30-9-2019 after the payment of full & final dues amounting to Rs. 1,15,200/- only, is legal and justified? If not, what relief including reinstatement, and other service benefits the aggrieved workman is entitled to? and if yes, what are its effects**?"

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 320 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of the parties since 18-12-2020, but none had appeared till 25-10-2021, on which date Shri Prateek Kumar, Advocate had appeared for petitioner whereas Shri B.R Kashyap, Advocate had appeared for respondent on 2-7-2022, again none had appeared for petitioner before this Tribunal.

3. This Court had been issuing continuously notices to petitioner through registered letter on the address given in reference notification itself, has not been received back to this Court either served or unserved. This Court is issuing notices to the petitioner but neither the petitioner nor any Counsel on his behalf has appeared before this Court which seems that presently he is not interested to pursue his case arising out of reference. Moreover, from the reference notification dated 26-11-2020, it is clear that the petitioner has taken his full & final dues amounting to Rs. 1,15,200/- from the respondent which also seems that the petitioner is not interested to pursue this reference petition by filing statement of claim.

4. Such being the situation, now, I am left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

5. As per the reference received from the appropriate government, the petitioner has alleged his termination *w.e.f.* 30-9-2019 to be illegal and unjustified after the payment of full and final dues amounting to Rs. 1,15,200/-but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent after taking full & final dues, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence *i.e.* oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up as and when anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

6. File, after completion, be consigned to record room.

Announced:
8-8-2022

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

MPP & POWER DEPARTMENT

NOTIFICATION

Shimla-2, the 24th September, 2022

File No. MPP-F002/13/2021-Loose.—In pursuance of the Clause 4.1.1.1 (A) (xxxviii) in Chapter-IV of Swaran Jayanti Energy Policy, 2021 of the State of Himachal Pradesh, the Governor, Himachal Pradesh is pleased to constitute the State Level Committee under the Chairmanship of Hon'ble MPP & Power Minister, Himachal Pradesh to look into the problems being faced by the Hydro Power Producers and resolve them in a well-planned time bound manner, as under:—

Sl. No.	Designation	Member
1.	Hon'ble MPP & Power Minister	*Chairman*
2.	Chief Secretary/Addl. Chief Secretary/Principal Secretary (MPP & Power and NES).	*Member*
3.	Addl. Chief Secretary/Principal Secretary (Forest)	*Member*
4.	Addl. Chief Secretary/Principal Secretary (Environment, Science & Technology).	*Member*
5.	Addl. Chief Secretary/Principal Secretary (Revenue)	*Member*
6.	Add. Chief Secretary/Principal Secretary (PWD)	*Member*
7.	Addl. Chief Secretary/Principal Secretary (I&PH)	*Member*
8.	Director, Directorate of Energy	*Member Secretary*

The Committee shall convene meetings quarterly and the following shall be special invitees to the Meeting:—

1. Deputy Commissioner Concerned
2. Superintendent of Police Concerned
3. Representatives on behalf of Project Developers

Scope of the Committee:

1. The Committee will analyze various issues being faced by the project developer during the period of implementation of hydel projects and impart necessary directions/suggestions to the concerned agencies/departments so as to resolve the issues expeditiously within the stipulated time period assigned for respective activities, so as to boost the hydro power sector.

2. The Committee shall monitor the various issues pertaining to implementing of Hydro Electric Project relating to:—

   (i) Employment
   (ii) Relief and Rehabiliation
   (iii) Review of Progress of Pre-Commissioning and Post-Commissioning LADF.
   (iv) Monitoring of issues being faced in obtaining Forest/Environment Clearance and implementation of Catchment Area Treatment (CAT) Plan, Compensatory Afforestation, Environmental Management Plan, Environment Impact Assessment (EIA) Plan.

(v) Overview of safety and quality control mechanism of the Project.

(vi) Restoration in infrastructure facilities which get damaged because of the implementation of the Projects.

By order,

Sd/-
(R.D. DHIMAN),
Chief Secretary (MPP & Power).

FOOD, CIVIL SUPPLIES & CONSUMER AFFAIRS DEPARTMENT

NOTIFICATION

Shimla-9, the 28th October, 2022

No. FDS-H (B) 2- 11/2014-23018-39.—In exercise of the powers conferred upon me under clause 2(h) of the H.P. Trade Article (Licensing and Control) Order 1981 and under clause 2 (g) of the H.P. Specified Articles (Regulation of Distribution) Order, 2019, I, K.C. Chaman (I.A.S.), Director, Food, Civil Supplies & Consumer Affairs. H.P. hereby authorize Shri Pawan Kumar, Food & Supplies Officer, O/o District Controller, Food, Civil Supplies & Consumer Affairs, Mandi District Mandi as Licensing Authority and Controller respectively to exercise all the powers of the Licensing Authority and Controller under the orders referred *supra* within the territorial jurisdiction of Mandi District till the posting/appointment of the District Controller Food, Civil Supplies & Consumer Affairs, Mandi with immediate effect.

Sd/-
(K.C. CHAMAN I.A.S.),
Director, Food Civil Supplies & Consumer Affairs, H.P. Shimla-9.

SPECIFIC NOTIFICATION
FINANCE DEPARTMENT

NOTIFICATION

Shimla, the 3rd November, 2022

No.Fin-2-C(12)-1/2022(I).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (Securities) of **12**-year tenure for an aggregate amount of Rs. **500 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the Loan :

1. (i) The Proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.

(ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293(3) of the Constitution of India.

Method of Issue :

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai- 400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the **yield** based auction under multiple price formats.

Allotment to Non-competitive Bidders :

3. The Government Stock up to 10 % of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1 % of the notified amount for a single bid as per the Revised Scheme for Non-competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure – II).

Place and Date of Auction :

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai - 400 001 on **November 07, 2022**. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) system as stated below on **November 07, 2022**.

(a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.30 A.M.

(b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.00 A.M.

Result of the Auction :

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **November 09, 2022**

Method of Payment :

6. Successful bidders will make payments on **November 09, 2022** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India, Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort)/New Delhi.

Tenure :

7. The Stock will be of **12**-year tenure. The tenure of the Stock will commence on **November 09, 2022.**

Date of Repayment :

8. The loan will be repaid at par on **November 09, 2034.**

Rate of Interest :

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **May 09 and November 09**.

Eligibility of Securities :

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh,

Sd/-
Secretary to the Government of Himachal Pradesh,
Finance Department.

SPECIFIC NOTIFICATION
FINANCE DEPARTMENT

NOTIFICATION

Shimla, the 3rd November, 2022

No.Fin-2-C(12)-1/2022(II).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (Securities) of **13**-year tenure for an aggregate amount of Rs. **500 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the Loan :

1. (i) The Proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.

   (ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293(3) of the Constitution of India.

Method of Issue :

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai- 400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the **yield** based auction under multiple price formats.

Allotment to Non-competitive Bidders :

3. The Government Stock up to 10 % of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1 % of the notified amount for a single bid as per the Revised Scheme for Non-competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure – II).

Place and Date of Auction :

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai - 400 001 on **November 07, 2022**. Bids for the auction should be submitted in

electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) system as stated below on **November 07, 2022**.

(a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.30 A.M.

(b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.00 A.M.

Result of the Auction :

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **November 09, 2022**

Method of Payment :

6. Successful bidders will make payments on **November 09, 2022** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India, Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort)/New Delhi.

Tenure :

7. The Stock will be of **13**-year tenure. The tenure of the Stock will commence on **November 09, 2022.**

Date of Repayment :

8. The loan will be repaid at par on **November 09, 2035.**

Rate of Interest :

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **May 09 and November 09.**

Eligibility of Securities :

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh,

Sd/-
Secretary to the Government of Himachal Pradesh,
Finance Department.

SPECIFIC NOTIFICATION
FINANCE DEPARTMENT

NOTIFICATION

Shimla, the 3rd November, 2022

No.Fin-2-C(12)-1/2022(III).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (Securities) of **14**-year tenure for an aggregate amount of Rs. **500 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the Loan :

1. (i) The Proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.

   (ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293(3) of the Constitution of India.

Method of Issue :

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai- 400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the **yield** based auction under multiple price formats.

Allotment to Non-competitive Bidders :

3. The Government Stock up to 10 % of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1 % of the notified amount for a single bid as per the Revised Scheme for Non-competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure – II).

Place and Date of Auction :

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai - 400 001 on **November 07, 2022**. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) system as stated below on **November 07, 2022**.

   (a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.30 A.M.

   (b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.00 A.M.

Result of the Auction :

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **November 09, 2022**

Method of Payment :

6. Successful bidders will make payments on **November 09, 2022** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India, Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort)/New Delhi.

Tenure :

7. The Stock will be of **14**-year tenure. The tenure of the Stock will commence on **November 09, 2022.**

Date of Repayment :

8. The loan will be repaid at par on **November 09, 2036.**

Rate of Interest :

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **May 09 and November 09.**

Eligibility of Securities :

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh,

Sd/-
Secretary to the Government of Himachal Pradesh,
Finance Department.

SPECIFIC NOTIFICATION
FINANCE DEPARTMENT

NOTIFICATION

Shimla, the 3rd November, 2022

No.Fin-2-C(12)-1/2022(IV).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (Securities) of **15**-year tenure for an aggregate amount of Rs. **500 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the Loan :

1. (i) The Proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.

(ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293(3) of the Constitution of India.

Method of Issue :

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai- 400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the **yield** based auction under multiple price formats.

Allotment to Non-competitive Bidders :

3. The Government Stock up to 10 % of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1 % of the notified amount for a single bid as per the Revised Scheme for Non-competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure – II).

Place and Date of Auction :

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai - 400 001 on **November 07, 2022**. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) system as stated below on **November 07, 2022**.

(a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.30 A.M.
(b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.00 A.M.

Result of the Auction :

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **November 09, 2022**

Method of Payment :

6. Successful bidders will make payments on **November 09, 2022** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India, Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort)/New Delhi.

Tenure :

7. The Stock will be of **15**-year tenure. The tenure of the Stock will commence on **November 09, 2022.**

Date of Repayment :

8. The loan will be repaid at par on **November 09, 2037.**

Rate of Interest :

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **May 09 and November 09.**

Eligibility of Securities :

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh,

Sd/-
Secretary to the Government of Himachal Pradesh,
Finance Department.

In the Court of Executive Magistrate, Kumarsain, District Shimla (H. P.)

Shri Kamal Jeet, s/o Late Smt. Manorma, w/o Late Shri Charan Dass, r/o Village Kumarsain, P.O. Kumarsain, Tehsil Kumarsain, District Shimla, Himachal Pradesh.

Versus

General Public

Application under section 13(3) of the Registration of Births & Deaths Act, 1969 to enter the death of Smt. Anjana, w/o Shri Kanwar Ranvir Singh Tomar in record of the Registrar, Births & Deaths, Gram Panchayat Kumarsain.

Shri Kamal Jeet, s/o Late Smt. Manorma, w/o Late Shri Charan Dass, r/o Village Kumarsain, P.O. Kumarsain, Tehsil Kumarsain, District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Registration of Births & Deaths Act, 1969 to enter the death of his sister named—Smt. Anjana Devi w/o Sh. Kanwar Ranvir Singh Tomar, r/o Village Kumarsain, P.O. Kumarsain, Tehsil Kumarsain, District Shimla, in record of the Registrar Births and Deaths-*cum*-Secretary, Gram Panchayat Kumarsain, Tehsil Kumarsain as under:—

Sl. No.	Name of Deceased Person	Relation of Deceased Person with applicant	Date of death
1.	Smt. Anjana Devi w/o Shri Kanwar Ranvir Singh Tomar	Sister	31-03-2000

Hence, this proclamation is hereby issued to the general public if they have any objection/claim with regard to entr death of Smt. Anjana Devi in record of the Registrar, Births and Deaths-*cum*-Secretary, Gram Panchayat Kumarsain, Tehsil Kumarsain, District Shimla then

they may file their written objections/claims in this court on or before one month of publication of this proclamation in Govt. Gazette, failing which necessary orders will be passed for entry of death.

Issued today on 10th day of October, 2022 under my seal and signature.

Seal.

Sd/-
Executive Magistrate,
Kumarsain, District Shimla (H.P.).

In the Court of Sh. Nishant Kumar (H.P.A.S.), Sub- Divisional Magistrate, Shimla (Rural), District Shimla (H.P.)

1. Sh. Hitesh Sharma s/o Sh. Ramesh Kumar Sharma, r/o Village Dhanayal, P.O. Chailly *via* Summerhill, Tehsil Shimla Rural, District Shimla, Himachal Pradesh.

2. Richa d/o Sh. Anil Kumar, r/o Verma Niketan, Lower Khalini near Venus Tailor Shimla, Tehsil & District Shimla.

Versus

General Public

Subject.—Registration of Marriage under section 8(4) of the Himachal Pradesh Registration of Marriage Act, 1996.

Sh. Hitesh Sharma s/o Sh. Ramesh Kumar Sharma, r/o Village Dhanayal, P.O. Chailly *via* Summerhill, Tehsil Shimla Rural, District Shimla, Himachal Pradesh and Richa d/o Sh. Anil Kumar, r/o Verma Niketan, Lower Khalini near Venus Tailor Shimla, Tehsil & District Shimla have filed an application alongwith affidavits in the court of the undersigned stating therein that they have soleminized their marriage on 23-11-2019 but the marriage has not been found entered in the record of Registrar of Marriages of Gram Panchayat/Municipal Corporation Shimla.

Therefore, objections are hereby invited from the General Public through this notice, that if anyone has any objection regarding registration of this marriage, they can file their objections personally or in writing before the court of undersigned on or before 21-11-2022. After that no objection shall be entertained and marriage will be registered accordingly.

Issued under my hand and seal of the court today on 19th day of October, 2022.

Seal.

NISHANT KUMAR (H.P.A.S.),
Sub-Divisional Magistrate,
Shimla (Rural).

ब अदालत श्री राम भज शर्मा, सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार कोटगढ़, उप–तहसील कोटगढ़, जिला शिमला (हि0 प्र0)

वाद संख्या : 03 / 2022 तारीख दायर : 19–07–2022 किस्म मुकद्दमा : दावा तकसीम

श्री मंगत राम पुत्र स्व0 श्री सन्धु राम, ग्राम कोटीधार, डा0 भुट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0 प्र0)

बनाम

श्री रविन्द्र कुमार व अन्य

ईश्तहार मुश्तरी मुनियादी बनाम :–

23. श्री रविन्द्र कुमार पुत्र स्व0 श्री राजिन्द्र कुमार, गांव व डाकघर भुट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 24. श्री सुरिन्द्र कुमार पुत्र स्व0 श्री हुक्म चन्द, गांव केपू डाकघर किरटी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 25. श्री गजिन्द्र कुमार पुत्र स्व0 श्री हुक्म चन्द, गांव केपू डाकघर किरटी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 26. श्री अनूप पुत्र श्रीमती अलका व श्रीमती अंजुम पुत्रियां श्रीमती राजेश्वरी, गांव दन्थला, डाकघर व उप–तहसील कोटगढ़, 27. बिना देवी पुत्री स्व0 श्री हुकम चन्द, गांव केपू डाकघर किरटी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 28. रिना देवी पुत्री स्व0 हुकम चन्द, गांव केपू डाकघर किरटी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 29. अन्जली पुत्री स्व0 हुकम चन्द, गांव केपू डाकघर किरटी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 30. श्री प्रकाश चन्द पुत्र स्व0 श्री अमर चन्द, गांव व डाकघर भूट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 31. श्री कुकु पुत्र स्व0 श्री अमर चन्द, गांव व डाकघर भुट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 32. श्री सतीश पुत्र स्व0 श्री अमर चन्द, गांव व डाकघर भुट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 33. श्रीमती तारा पुत्री स्व0 श्री अमर चन्द, गांव पलसर, डाकघर भुट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 34. श्रीमती सरजु देवी पुत्री स्व0 श्री अमर चन्द, गांव व डाकघर गिलटारी, तहसील जुब्बल, जिला शिमला (हि0प्र0), 35. श्रीमती मनोरमा देवी पुत्री स्व0 श्री अमर चन्द, गांव चिमला, डाकघर व उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 36. श्रीमती शारदा देवी पुत्री स्व0 श्री अमर चन्द, गांव कन्दरोड़ा, डाकघर खन्गटेरी, तहसील रोहडू, जिला शिमला (हि0प्र0), 37. श्रीमती अनुराधा पुत्री स्व0 श्री अमर चन्द, गांव तकलेच, तहसील रामपुर, जिला शिमला (हि0प्र0), 38. श्रीमती सीमा पुत्री स्व0 श्री अमर चन्द, गांव मन्जाबन, डाकघर भुट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 39. शिव सिंह स्व0 श्री लोभ चन्द, गांव व डाकघर भुट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 40. श्री गुलाब सिंह पुत्र स्व0 श्री लोभ चन्द, गांव व डाकघर भुट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 41. सुशीला देवी पुत्री स्व0 श्री लोभ चन्द, गांव व डाकघर भुट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 42. रूकमणी पत्नी स्व0 श्री अमर चन्द, गांव व डाकघर भुट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 43. श्री दिनेश कुमार पुत्र श्री दिवानमल, गांव व डाकघर भुट्टी, उप–तहसील कोटगढ़, जिला शिमला (हि0प्र0), 44. नरवदा पुत्री श्री दौला, गांव व डाकघर कोटखाई, उप–तहसील कोटखाई, जिला शिमला (हि0प्र0)।

नोटिस बजरिया ईश्तहार उपरोक्त प्रतिवादीगण के पक्ष में इस आश्य से जारी किया जाता है कि मुकद्दमा उपरोक्त बाबत भूमि खाता / खतौनी नम्बर 99 / 197, कुल कित्ता 3, रकबा तादादी 00–31–69 हैकटेयर, खाता / खतौनी नम्बर 101 / 199 ता 204, कित्ता 25, रकबा तादादी 03–62–03 हैक्टेयर व खाता / खतौनी नम्बर 102 / 205 ता 207, कुल कित्ता 3, रकबा तादादी 00–80–23 हैकटेयर, स्थित मोहाल भुट्टी, जमाबन्दी साल 2016–2017, पटवार वृत्त भुट्टी, उप–तहसील कोटगढ़, जिला शिमला हिमाचल प्रदेश के समम्बन्ध में उनवान वाला से उक्त प्रतिवादीगण क्रम संख्या 1 ता 22 के पक्ष में समन जारी किए गए ताकि

वे इस हुकमन तकसीम वाद में अपना पक्ष रख सकें, परन्तु विभिन्न कारणों के चलते समनों की तामील साधारण ढंग से नहीं हो पाई है। इसलिए अदालत को अब पूर्ण विश्वास हो चुका है कि समन की तामील साधारण ढंग से की जानी मुमकिन नहीं है। अतः अक्त प्रतिवादिगणों को इस इश्तहार द्वारा सूचित किया जाता है कि वे इस इश्तहार के राजपत्र हिमाचल प्रदेश में प्रकाशन के एक माह के अन्दर असालतन या वकालतन अधोहस्ताक्षरी की अदालत उप–तहसील कार्यालय कोटगढ़ में हाजिर आकर उक्त मुकद्दमा की पैरवी करें अन्यथा आपके विरुद्ध एकतरफा कार्यावाही अमल में लाई जायेगी। इसके अतिरिक्त यदि उक्त निर्धारित अवधि के अन्दर कोई प्रतिवादीगण पेश नहीं होता है तो यह समझा जायेगा कि उपरोक्त समस्त प्रतिवादीगण का उपरोक्त तकसीम बारे कोई एतराज नहीं है और नियमानुसार तकसीम करने के आदेश अदालत से पारित कर दिए जाएंगे।

आज दिनांक 20–10–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुए।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार,
कोटगढ़, उप–तहसील कोटगढ़, जिला शिमला (हि0 प्र0)।

————————

In the Court of Executive Magistrate (Tehsildar) Nalagarh, District Solan (H.P.)

Case No. : 05 /2022 Date of Institution : 04-10-2022 Date of Decision :

Sh. Surinder Singh s/o Shri Balwant Singh, r/o Vill. Nangran, P.O. Bhallan, Tehsil & District Roopnagar (Punjab)

Versus

General Public through : Municipal Corporation Nalagarh, Tehsil Nalagarh, District Solan (H.P.)

Application under section 13(3) of H.P. Birth and Death Registration Act, 1969.

Sh. Surinder Singh s/o Shri Balwant Singh, r/o Vill. Nangran, P.O. Bhallan, Tehsil & District Roopnagar (Punjab) has filed an application under section 13(3) of the Birth & Death Registration Act, 1969 stating therein that his daughter namely Deepika Chandel d/o Sh. Surender Singh was born on dated 06-08-1993 at Ward No. 4, Nalagarh, P.O. & Tehsil Nalagarh, District Solan, Himachal Pradesh but her birth could not be registered in the record of Municipal Corporation Nalagarh, Tehsil Nalagarh, District Solan (H.P.) within stipulated period. He prayed for passing necessary orders to Municipal Corporation Nalagarh, Tehsil Nalagarh, District Solan (H.P.) for entering the same in the records.

Therefore, by this proclamation, the general public is hereby informed that any person having objection regarding the birth of namely Deepika Chandel d/o Sh. Surender Singh may file their objection in this court on or before 15-11-2022, failing which no objection shall be entertained.

Given under my hand and seal on this 4th day of September, 2022

Seal. Sd/-,
Executive Magistrate (Tehsildar),
Nalagarh, District Solan (H P.).

In the Court of Executive Magistrate (Tehsildar) Nalagarh, District Solan (H.P.)

Case No. : 06 /2022 Date of Institution : 12-10-2022 Date of Decision :

Smt. Siraj w/o Shri Khalil Mohd., r/o Vill. Nangal Upperla, P.O. Nangal, Tehsil Nalagarh, District Solan (H.P.).

Versus

General Public through : Gram Panchayat Goaljamala, Tehsil Nalagarh, District Solan (H.P.)

Application under section 13(3) of H.P. Birth and Death Registration Act, 1969.

Smt. Siraj w/o Shri Khalil Mohd., r/o Vill. Nangal Upperla, P.O. Nangal, Tehsil Nalagarh, District Solan (H.P.) has filed an application under section 13(3) of the Birth & Death Registration Act, 1969 stating therein that her daughter namely Aliya d/o Sh. Khalil Mohd. was born on dated 18-07-2017 at Village Nangal Upperla, Tehsil Nalagarh, District Solan, Himachal Pradesh but her birth could not be entered in the record of old Gram Panchayat Goaljamala, Tehsil Nalagarh, District Solan (H.P.) within stipulated period. He prayed for passing necessary orders to the newly Gram Panchayat Goaljamala, Tehsil Nalagarh, District Solan (H.P.) for entering the same in the records.

Therefore, by this proclamation, the general public is hereby informed that any person having objection regarding the birth of namely Aliya d/o Sh. Khalil Mohd. may file their objection in this court on or before 15-11-2022, failing which no objection shall be entertained.

Given under my hand and seal on this 12th day of October, 2022

Seal. Sd/-,
Executive Magistrate (Tehsildar),
Nalagarh, District Solan (H P.).

In the Court of Vivek Sharma, HPAS, Marriage Officer-cum**-Sub Divisional Magistrate, Solan, Tehsil & District Solan (H.P.)**

Notice Under Section 16 of Special Marriage Act.

Whereas, Mr. Priyanshul Kashyap s/o Sh. Prem Chand Kashyap r/o Prem Cottage, Surya Kiran Colony, Bawra Road, Chambaghat, Tehsil & District Solan (H.P.) and Ms. Thungchanbeni P Jami d/o Sh. Phyosao Jami, r/o H. No. 19, below WTBC Graveyard, Airfield Colony, Wokha Sadar, Wokha, Nagaland-797111 have gave notice of intended marriage under section 5 of the Special Marreage Act, 1954 to this office.

Notices are given to all concerned and General Public to this effect if anybody has got any objection regarding the registration of marriage between above said, Mr. Priyanshul Kashyap s/o Sh. Prem Chand Kashyap r/o Prem Cottage, Surya Kiran Colony, Bawra Road, Chambaghat, Tehsil & District Solan (H.P.) and Ms. Thungchanbeni P Jami d/o Sh. Phyosao Jami, r/o H. No. 19, below WTBC Graveyard, Airfield Colony, Wokha Sadar, Wokha, Nagaland-797111 they should file their written objections and should appear presonally or through their authorized agents before me within a period of thirty days from the date of issue of this notices. After expiry of the said period, the marriage certificate would be issued to the applicants by this court and later on no objection will be heard and accepted.

Issued under my hand and seal of the court on this 28 th day of October, 2022.

Seal.

VIVEK SHARMA, HPAS,
Marriage Officer-cum-
Sub-Divisional Magistrate,
Solan, District Solan (H. P.).

In the Court of Vivek Sharma, HPAS, Marriage Officer-cum-Sub Divisional Magistrate, Solan, Tehsil & District Solan (H.P.)

Notice Under Section 16 of Special Marriage Act.

Whereas, Sh. Anuj Kumar s/o Sh. Chander Bhan, r/o Near Tar Factory, Subathu Road Saproon, Solan, Tehsil & District Solan (H.P.) and Smt. Baby w/o Sh. Anju Kumar r/o Near Tar Factory, Subathu Road Saproon, Solan, Tehsil & District Solan (H.P.) have filed application for the registration of their marriage, which was solemnized on 08-11-2019 and they have been living as husband and wife ever since then.

Notices are given to all concerned and General Public to this effect if anybody has got any objection regarding the registration of marriage duly solemnized between above Sh. Anuj Kumar s/o Sh. Chander Bhan r/o Near Tar Factory, Subathu Road Saproon, Solan, Tehsil & District Solan (H.P.) and Smt. Baby w/o Sh. Anju Kumar r/o Near Tar Factory, Subathu Road Saproon, Solan, Tehsil & District Solan (H.P.) they should file their written objections and should appear presonally or through their authorized agents before me within a period of thirty days from the date of issue of this notices. After expiry of the said period, the marriage certificate would be issued to the applicants by this court and later on no objection will be heard and accepted.

Issued under my hand and seal of the court on this 13th day of October, 2022.

Seal.

VIVEK SHARMA, HPAS,
Marriage Officer-cum-
Sub-Divisional Magistrate,
Solan, District Solan (H. P.).

In the Court of Vivek Sharma, HPAS, Marriage Officer-cum-Sub Divisional Magistrate, Solan, Tehsil & District Solan (H.P.)

Notice Under Section 16 of Special Marriage Act.

Whereas, Sh. Harmohinder Kumar Gupta s/o Late Sh. Piare Lal Gupta, r/o Vohra Building Saproon, P.O. Saproon, Tehsil & District Solan (H.P.) and Smt. Kiran Gupta w/o Sh. Harmohinder Kumar Gupta s/o Late Sh. Piare Lal Gupta, r/o Vohra Building Saproon, P.O. Saproon, Tehsil & District Solan (H.P.) have filed application for the registration of their marriage, which was solemnized on 06-05-1989 and they have been living as husband and wife ever since then.

Notices are given to all concerned and General Public to this effect if anybody has got any objection regarding the registration of marriage duly solemnized between above Sh. Harmohinder Kumar Gupta s/o Late Sh. Piare Lal Gupta, r/o Vohra Building Saproon, P.O. Saproon, Tehsil & District Solan (H.P.) and Smt. Kiran Gupta w/o Sh. Harmohinder Kumar Gupta s/o Late Sh. Piare Lal Gupta, r/o Vohra Building Saproon, P.O. Saproon, Tehsil & District Solan (H.P.) they should file their written objections and should appear presonally or through their authorized agents before me within a period of thirty days from the date of issue of this notice. After expiry of the said period, the marriage certificate would be issued to the applicants by this court and later on no objection will be heard and accepted.

Issued under my hand and seal of the court on this 15th day of October, 2022.

Seal.

VIVEK SHARMA, HPAS,
Marriage Officer-cum-
Sub-Divisional Magistrate,
Solan, District Solan (H. P.).

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।